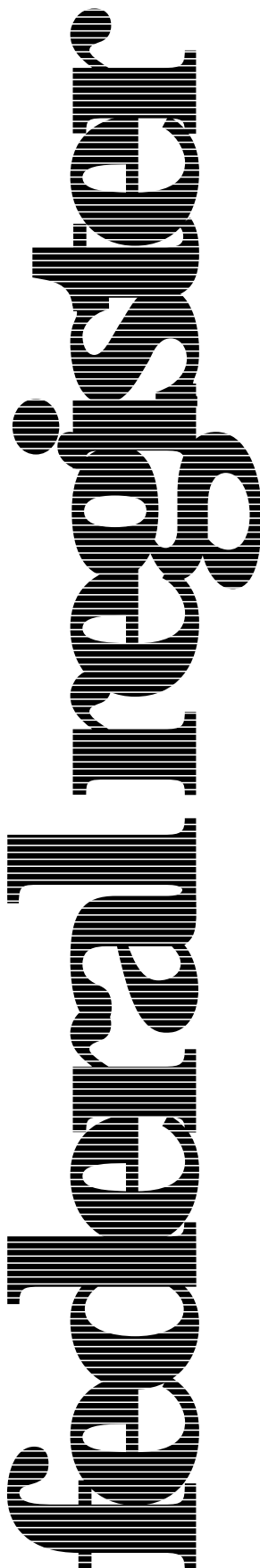


Friday  
January 23, 1998



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### WASHINGTON, DC

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- WHEN:** January 27, 1998 at 9:00 am, and  
February 17, 1998 at 9:00 am.  
**WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street NW.,  
Washington, DC  
(3 blocks north of Union Station Metro)  
**RESERVATIONS:** 202-523-4538



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# Presidential Documents

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Title 3—

Presidential Determination No. 98-10 of January 12, 1998

The President

**Certification Pursuant to Section (b)(1) of Public Law 99-183  
and to Section 902(a)(6)(B) of Public Law 101-246**

**Memorandum for the Secretary of State**

Pursuant to section (b)(1) of Public Law 99-183 of December 16, 1985, relating to the approval and implementation of the Agreement for Cooperation Between the United States and the People's Republic of China, I hereby certify that:

(A) the reciprocal arrangements made pursuant to Article 8 of the Agreement have been designed to be effective in ensuring that any nuclear material, facilities, or components provided under the Agreement shall be utilized solely for intended peaceful purposes as set forth in the Agreement;

(B) the Government of the People's Republic of China has provided additional information concerning its nuclear nonproliferation policies and that, based on this and all other information available to the United States Government, the People's Republic of China is not in violation of paragraph (2) of section 129 of the Atomic Energy Act of 1954; and

(C) the obligation to consider favorably a request to carry out activities described in Article 5(2) of the Agreement shall not prejudice the decision of the United States to approve or disapprove such a request.

Pursuant to section 902(a)(6)(B)(i) of Public Law 101-246, I hereby certify that the People's Republic of China has provided clear and unequivocal assurances to the United States that it is not assisting and will not assist any nonnuclear-weapon state, either directly or indirectly, in acquiring nuclear explosive devices or the material and components for such devices.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, January 12, 1998.*

# Rules and Regulations

Federal Register

Vol. 63, No. 15

Friday, January 23, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1730

RIN 0572-AA74

#### Electric System Operations and Maintenance

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations by adding a new part on electric system operations and maintenance. This action codifies and clarifies RUS policy relating to the operations and maintenance of electric systems by RUS electric borrowers. This rule also contains provisions relating to the review and evaluation of borrowers' electric systems and facilities operations and maintenance practices. These policies are presently contained in RUS Bulletin 161-5, which will be rescinded when the final rule becomes effective. This action clarifies the policies, procedures, and requirements, facilitates understanding and compliance, and improves program effectiveness with respect to electric system operations and maintenance.

**EFFECTIVE DATE:** This rule is effective February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250-1569, telephone (202) 720-1398, e-mail fgatchel@rus.usda.gov.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore

has not been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this rule.

#### National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

#### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Final Rule-Related Notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 Fed. Reg. 47034) exempted RUS loans and loan guarantees from coverage under this order.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards in section 3 of the Executive Order.

#### National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

#### Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under control number 0572-0025.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

#### Background

RUS has promulgated policies and procedures regarding the review and evaluation of the operations and maintenance practices of RUS financed electric systems. These policies and procedures are presently contained in RUS Bulletin 161-5, Electric System Review and Evaluation. The security instrument and loan contract between RUS and electric borrowers set certain standards for the operation and maintenance of each borrower's electric system. The purpose of this rule is to implement the operations and maintenance provisions of the security instrument and loan contract between RUS and electric borrowers and to consolidate and clarify RUS policies and procedures with respect to electric system operations and maintenance. Most of the provisions of this rule represent policies and requirements that have been in effect for some time. One new provision expands the requirement for electric system review and evaluation of borrower's electric systems to include power supply borrowers in addition to the distribution borrowers presently covered by Bulletin 161-5. Proper operation and maintenance practices are equally significant for power supply borrowers, so RUS believes that power supply borrowers' operation and maintenance practices should be covered under the review and evaluation requirements of this rule. RUS Form 300, Review Rating Summary, has also been updated and revised based on RUS' experience using this form.

## Comments

On April 16, 1997, RUS published a proposed rule at 62 Fed. Reg. 18544. Comments were received from ten parties, including two cooperative associations, a borrower engineering committee, two distribution borrowers, and five power supply borrowers. RUS considered all comments received. The significant and most commonly made comments are addressed herein.

Several commenters requested that RUS provide more guidance and supplemental information regarding these requirements, especially the ratings of the items on RUS Form 300, Review Rating Summary. RUS is currently preparing Bulletin 1730-1, "Electric System Operation and Maintenance (O&M)," which will provide guidelines related to O&M, including a rating guide for RUS Form 300.

Some commenters requested that RUS provide for an "alternative dispute resolution" procedure if a borrower disagrees with a rating or determination made by RUS. This type of disagreement has rarely occurred, and RUS believes that an adequate appeal avenue already exists. Any disagreements with the RUS staff's rating can always be appealed with the Regional Director or the Administrator.

One commenter requested that this rule address more operational concerns, such as momentary interruptions, voltage stability, job training and safety, and lightning protection. It was also suggested that RUS require that an O&M survey be completed prior to beginning a new construction work plan (CWP) or long-range engineering plan (LRP). RUS encourages borrowers to expand and elaborate on the O&M requirements prescribed by this rule to meet their specific needs; however, RUS has decided not to expand the requirements of this rule in these areas.

Some commenters recommended that the O&M reviews be limited to specific areas where a borrower has experienced problems, to borrowers with specific financial problems, or to certain specific types of facilities. RUS believes that all aspects of all borrowers' O&M should be reviewed periodically and these reviews should cover all facilities. These reviews can reveal potential problem areas that can be corrected before they manifest themselves as operational or financial difficulties. Therefore, RUS has not changed the scope of this rule.

Several commenters pointed out that the proposed rule does not adequately address borrowers who own but do not operate certain facilities. The rule has been changed to address this situation.

Several commenters requested that the frequency of inspection and test be determined giving due consideration to the manufacturer's recommendations, but that borrowers should not be specifically required to blindly follow such recommendations. RUS agrees and has revised the rule accordingly.

Some commenters requested that RUS clarify the requirement to evaluate compliance with the prior editions of the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), when applicable. The rule has been clarified with respect to the NEC. Since the NESC itself specifically addresses facilities that comply with prior editions of the NESC, no change is needed in the rule with respect to the NESC.

Several commenters requested that RUS eliminate duplication of reviews made by other Federal agencies and State commissions, etc. The rule has been changed to indicate that RUS will not duplicate these reviews, but may review the reports of these other reviewers. Since some of these other reviews may target a specific area (e.g., safety), and the RUS' review covers a wider range of areas (e.g., safety, reliability, economy, etc.), the RUS review may partially overlap the reviews of others.

Several commenters requested that RUS eliminate the requirement for an explanation of the borrower's rating of acceptable items. It is not RUS' intent to require an extensive discussion of these items, but simply an explanation of how the borrower arrived at its rating. RUS believes that this should involve little extra effort and should improve the overall value of the review, so no change has been made to this requirement.

One commenter suggested that RUS require that the borrower's Board of Directors be appraised of the findings of the O&M review. Item 15 of RUS Form 300 calls for the date that the O&M review was reviewed by the Board of Directors. For purposes of clarifying the rule, a specific provision has been added to the rule requiring discussion of the O&M review with the Board of Directors.

One commenter suggested that RUS not require a corrective action plan (CAP) in all cases where there is an unsatisfactory (i.e., 0 or 1) rating. RUS considers any unsatisfactory rating to be a potentially serious problem, so a CAP should be prepared. However, if the correction of the deficiency is already underway or can be accomplished in a short time or simply, the CAP may be very short and simple, such as referring to an item in an approved CWP. The

rule does not specify the format or amount of detail required for a CAP, so that borrowers have sufficient flexibility to tailor it to the seriousness and complexity of the problem. No change has been made to this requirement.

A number of commenters requested that RUS clarify or eliminate various items on the RUS Form 300. RUS has reviewed these items and has determined that requiring "Staff Hours" under part IV, Operations and Maintenance Budgets, is confusing, burdensome, and of limited benefit. This item has been deleted. RUS believes that Bulletin 1730-1, "Electric System Operation and Maintenance (O&M)," should provide additional guidance.

Some commenters are concerned that RUS requirements with respect to O&M may require excessive and unavailable funding. RUS recognizes that correcting operating and maintenance deficiencies may indeed be expensive, especially if the system has been allowed to deteriorate. Nevertheless, proper O&M of borrowers' systems is essential to the success of the rural electric program and to protecting the property that is the security for the Government's loans and guarantees. It is essential that each borrower budget sufficient resources to operate and maintain its system efficiently and properly.

One commenter stated that "this wasteful activity [the proposed rule] is unneeded, unnecessary and without common sense." RUS disagrees. As stated above, proper O&M of borrowers' systems is essential to the success of the rural electric program and to protecting the property that is the security for the Government's loans and guarantees. This rule is intended to clearly outline RUS policies and procedures and the borrowers' responsibilities with respect to O&M.

### List of Subjects in 7 CFR Part 1730

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, RUS hereby amends 7 CFR chapter XVII by adding part 1730 to read as follows:

### PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

#### Subpart A—General

##### Sec.

- 1730.1 Introduction.
- 1730.2 RUS policy.
- 1730.3 RUS addresses.
- 1730.4 Definitions.
- 1730.5–1730.19 [Reserved]

**Subpart B—Operations and Maintenance Requirements**

- 1730.20 General.
- 1730.21 Inspections and tests.
- 1730.22 Borrower analysis.
- 1730.23 Review rating summary, RUS Form 300.
- 1730.24 RUS review and evaluation.
- 1730.25 Corrective action.
- 1730.26 Engineer's certification.
- 1730.27–1730.99 [Reserved]

Appendix A to Subpart B of Part 1730—  
Review Rating Summary, RUS Form 300

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart A—General****§ 1730.1 Introduction.**

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) related to electric borrowers' operation and maintenance practices and RUS' review and evaluation of such practices.

(b) The policies and procedures included in this part apply to all electric borrowers (both distribution borrowers and power supply borrowers) and are intended to clarify and implement certain provisions of the security instrument and loan contract between RUS and electric borrowers regarding operations and maintenance. This part is not intended to waive or supersede any provisions of the security instrument and loan contract between RUS and electric borrowers.

(c) The Administrator may waive, for good cause, on a case by case basis, certain requirements and procedures of this part.

**§ 1730.2 RUS policy.**

It is RUS policy to require that all property of a borrower be operated and maintained properly in accordance with the requirements of each borrower's loan documents. It is also RUS policy to provide financial assistance only to borrowers whose operations and maintenance practices and records are satisfactory or to those who are taking corrective actions expected to make their operations and maintenance practices and records satisfactory to RUS.

**§ 1730.3 RUS addresses.**

(a) Persons wishing to obtain forms referred to in this part should contact: Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522, telephone (202) 720–8674. Borrowers or others may reproduce any of these forms in any number required.

(b) Documents required to be submitted to RUS under this part are to

be sent to the office of the borrower's assigned RUS General Field Representative (GFR) or such other office as designated by RUS.

**§ 1730.4 Definitions.**

Terms used in this part have the meanings set forth in 7 CFR Part 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR Part 1710.2, the term *Prudent Utility Practice* has the meaning set forth in Article 1, Section 1.01 of Appendix A to Subpart B of 7 CFR Part 1718—Model Form of Mortgage for Electric Distribution Borrowers, for the purposes of this Part.

**§§ 1730.5–1730.19 [Reserved]****Subpart B—Operations and Maintenance Requirements****§ 1730.20 General.**

Each distribution borrower and power supply borrower shall operate and maintain its system in compliance with Prudent Utility Practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, for maintaining records of the physical and electrical condition of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system in accordance with the requirements of this part. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

**§ 1730.21 Inspections and tests.**

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system,

and maintain adequate records of such inspections and tests.

(b) The frequency of inspection and testing will be determined by the borrower in conformance with applicable laws, regulations, national standards, and Prudent Utility Practice. The frequency of inspection and testing will be determined giving due consideration to the type of facilities or equipment, manufacturer's recommendations, age, operating environment and hazards to which the facilities are exposed, consequences of failure, and results of previous inspections and tests. The records of such inspections and tests will be retained in accordance with applicable regulatory requirements and Prudent Utility Practice. The retention period should be of a sufficient time period to identify long-term trends. Records must be retained at least until the applicable inspections or tests are repeated.

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

**§ 1730.22 Borrower analysis.**

(a) Each borrower shall periodically analyze in writing its operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical condition or the operational effectiveness of the system or suggest a need for changes in operations or maintenance practices. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

(1) Conduct the analysis required by paragraph (a) of this section not more

than 90 days prior to the scheduled RUS review;

(2) Complete RUS Form 300, Review Rating Summary, and other related forms, prior to RUS' review and evaluation; and

(3) Make available to RUS the borrower's completed RUS Form 300 (including a written explanation of the basis for each rating) and records related to the operations and maintenance of the borrower's system.

(c) For those facilities not included on the RUS Form 300 (e.g., generating plants), the borrower shall prepare and complete an appropriate supplemental form for such facilities.

#### **§ 1730.23 Review rating summary, RUS Form 300.**

RUS Form 300 in Appendix A shall be used when required by this part.

#### **§ 1730.24 RUS review and evaluation.**

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every three years. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its complete system. Reports made by other inspectors (e.g., other Federal agencies, State inspectors, etc.) will also be made available, as applicable. RUS will not duplicate these other reviews but will use their reports to supplement its own review. RUS may inspect facilities, as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower. The borrower's management will discuss this review and evaluation with its Board of Directors.

#### **§ 1730.25 Corrective action.**

(a) For any items on the RUS Form 300 rated unsatisfactory (i.e., 0 or 1) by the borrower or by RUS, the borrower shall prepare a corrective action plan (CAP) outlining the steps (both short term and long term) the borrower will take to improve existing conditions and to maintain an acceptable rating. The CAP must include a time schedule and cost estimate for corrective actions, and must be approved by the borrower's

Board of Directors. The CAP must be submitted to RUS for approval within 90 days after the completion of RUS' evaluation noted in § 1730.24.

(b) The borrower must periodically report to RUS in writing progress under the CAP. This report must be submitted to RUS every six months until all unsatisfactory items are corrected unless RUS prescribes a different reporting schedule.

#### **§ 1730.26 Engineer's certification.**

Where provided for in the borrower's loan documents, RUS may require the borrower to provide an "Engineer's Certification" as to the condition of the borrower's system (including, but not limited to, all mortgaged property.) Such certification shall be in form and substance satisfactory to RUS and shall be prepared by a professional engineer satisfactory to RUS. If RUS determines that the Engineer's Certification discloses a need for improvements to the condition of its system or any other operations of the borrower, the borrower shall, upon notification by RUS, promptly undertake to accomplish such improvements.

#### **§§ 1730.27–1730.99 [Reserved]**

### **Appendix—A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300**

Borrower Designation \_\_\_\_\_  
Date Prepared \_\_\_\_\_

Ratings on form are:

- 0: Unsatisfactory—no records
- 1: Unsatisfactory—corrective action needed
- 2: Acceptable, but should be improved—see attached recommendations
- 3: Satisfactory—no additional action required at this time
- N/A: Not applicable

#### **PART I—TRANSMISSION and DISTRIBUTION FACILITIES**

1. Substations (Transmission and Distribution)
  - a. Safety, Clearance, Code Compliance—Rating: \_\_\_\_\_
  - b. Physical Condition: Structure, Major Equipment, Appearance—Rating: \_\_\_\_\_
  - c. Inspection Records Each Substation—Rating: \_\_\_\_\_
  - d. Oil Spill Prevention—Rating: \_\_\_\_\_
2. Transmission Lines
  - a. Right-of-Way: Clearing, Erosion, Appearance, Intrusions—Rating: \_\_\_\_\_
  - b. Physical Condition: Structure, Conductor, Guying—Rating: \_\_\_\_\_
  - c. Inspection Program and Records—Rating: \_\_\_\_\_
3. Distribution Lines—Overhead
  - a. Inspection Program and Records—Rating: \_\_\_\_\_
  - b. Compliance with Safety Codes: Clearances—Rating: \_\_\_\_\_

Compliance with Safety Codes: Foreign

Structures—Rating: \_\_\_\_\_

Compliance with Safety Codes:

Attachments—Rating: \_\_\_\_\_

c. Observed Physical Condition from Field Checking: Right-of-Way—Rating: \_\_\_\_\_

Observed Physical Condition from Field Checking: Other—Rating: \_\_\_\_\_

4. Distribution—Underground Cable

a. Grounding and Corrosion Control—Rating: \_\_\_\_\_

b. Surface Grading, Appearance—Rating: \_\_\_\_\_

c. Riser Poles: Hazards, Guying, Condition—Rating: \_\_\_\_\_

5. Distribution Line Equipment: Conditions and Records

a. Voltage Regulators—Rating: \_\_\_\_\_

b. Sectionalizing Equipment—Rating: \_\_\_\_\_

c. Distribution Transformers—Rating: \_\_\_\_\_

d. Pad Mounted Equipment—Safety: Locking, Dead Front, Barriers—Rating: \_\_\_\_\_

Pad Mounted Equipment—Appearance: Settlement, Condition—Rating: \_\_\_\_\_

e. Kilowatt-hour and Demand Meter Reading and Testing—Rating: \_\_\_\_\_

#### **PART II—OPERATION AND MAINTENANCE**

6. Line Maintenance and Work Order Procedures

a. Work Planning and Scheduling—Rating: \_\_\_\_\_

b. Work Backlogs: Right-of-Way Maintenance—Rating: \_\_\_\_\_

Work Backlogs: Poles—Rating: \_\_\_\_\_

Work Backlogs: Retirement of Idle Services—Rating: \_\_\_\_\_

Work Backlogs: Other—Rating: \_\_\_\_\_

7. Service Interruptions

a. Average Annual Hours/Consumer by Cause (Complete for each of the previous 5 years)

1. Power Supplier \_\_\_\_\_

2. Major Storm \_\_\_\_\_

3. Scheduled \_\_\_\_\_

4. All Other \_\_\_\_\_

5. Total \_\_\_\_\_  
Rating: \_\_\_\_\_

b. Emergency Restoration Plan—Rating: \_\_\_\_\_

8. Power Quality  
General Freedom from Complaints—Rating: \_\_\_\_\_

9. Loading and Load Balance

a. Distribution Transformer Loading—Rating: \_\_\_\_\_

b. Load Control Apparatus—Rating: \_\_\_\_\_

c. Substation and Feeder Loading—Rating: \_\_\_\_\_

10. Maps and Plant Records

a. Operating Maps: Accurate and Up-to-Date—Rating: \_\_\_\_\_

b. Circuit Diagrams—Rating: \_\_\_\_\_

c. Staking Sheets—Rating: \_\_\_\_\_

#### **PART III—ENGINEERING**

11. System Load Conditions and Losses

a. Annual System Losses, \_\_\_\_\_%—Rating: \_\_\_\_\_

b. Annual Load Factor, \_\_\_\_\_%—Rating: \_\_\_\_\_

- c. Power Factor at Monthly Peak,  
\_\_\_\_\_%—Rating:\_\_\_\_\_
- d. Ratio of Individual Substation Peak kW  
to kVA, \_\_\_\_\_—Rating:\_\_\_\_\_
12. Voltage Conditions
- a. Voltage Surveys—Rating:\_\_\_\_\_
- b. Substation Transformer Output Voltage  
Spread—Rating:\_\_\_\_\_
13. Load Studies and Planning
- a. Long Range Engineering Plan—  
Rating:\_\_\_\_\_
- b. Construction Work Plan—  
Rating:\_\_\_\_\_
- c. Sectionalizing Study—Rating:\_\_\_\_\_
- d. Load Data for Engineering Studies—  
Rating:\_\_\_\_\_
- e. Load Forecasting Data—Rating:\_\_\_\_\_

#### PART IV—OPERATION AND MAINTENANCE BUDGETS

For Previous 2 Years:

Normal Operation—Actual \$ \_\_\_\_\_

Normal Maintenance—Actual \$ \_\_\_\_\_

Total—Actual \$ \_\_\_\_\_

For Present Year:

Normal Operation—Budget \$ \_\_\_\_\_

Normal Maintenance—Budget \$ \_\_\_\_\_

Total—Budget \$ \_\_\_\_\_

For Future 3 Years:

Normal Operation—Budget \$ \_\_\_\_\_

Normal Maintenance—Budget \$ \_\_\_\_\_

Additional (Deferred) Maintenance—Budget  
\$ \_\_\_\_\_

Total—Budget \$ \_\_\_\_\_

14. Budgeting:  
Adequacy of Budgets For Needed Work—  
Rating:\_\_\_\_\_
15. Date Discussed with Board of Directors  
\_\_\_\_\_

Remarks: \_\_\_\_\_

#### EXPLANATORY NOTES

Item No. \_\_\_\_\_ Comments \_\_\_\_\_

Rated by \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ Manager \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ RUS GFR \_\_\_\_\_

Date \_\_\_\_\_

Dated: January 14, 1998.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 98-1661 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-15-P

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 900, 932 and 933

[No. 97-83]

RIN 3069-AA66

#### Membership Eligibility

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending the definition of the term "State" in its Membership Regulation to include the

U.S. Territory of American Samoa (American Samoa) and the U.S. Commonwealth of the Northern Mariana Islands (the Northern Mariana Islands). Institutions organized under the laws of American Samoa and the Northern Mariana Islands, therefore, will be eligible to apply for Federal Home Loan Bank (Bank) membership. In accordance with these changes, the Finance Board also is clarifying in its regulations that the Seattle Bank District includes American Samoa and the Northern Mariana Islands. In addition, the Finance Board is designating Hawaii as the State in which members with a principal place of business in American Samoa, the Northern Mariana Islands, or Guam, shall be deemed to be located for purposes of election of Bank directors.

**DATES:** The final rule is effective on February 23, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Sharon B. Like, Senior Attorney-Adviser, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

### I. Statutory and Regulatory Background

#### A. Membership Eligibility Requirement—Definition of "State"

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. See 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. See *id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

Specifically, under the Act and the Membership Regulation, applicants for Bank membership must satisfy, among other requirements, the requirement that they are "duly organized under the laws of any State or of the United States." See 12 U.S.C. 1424(a)(1)(A); 12 CFR 933.6(a)(1), 933.7. Section 2(3) of the Act defines the term "State" as follows:

The term "State" includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 U.S.C. 1422(3). Guam and the U.S. Virgin Islands are U.S. Territories, while Puerto Rico is a U.S. Commonwealth.

Section 933.1(cc) of the Finance Board's Membership Regulation implements the statutory definition by defining the term "State" as follows:

*State* means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 CFR 933.1(cc). The regulatory definition does not specifically include any other U.S. Territories, Commonwealths or Dependencies within the meaning of "State." Therefore, financial institutions organized under the laws of such other jurisdictions currently are not eligible for Bank membership under the regulation, unless other specific laws or agreements executed by the United States and these jurisdictions make the Act applicable to such jurisdictions.

On September 24, 1997, the Finance Board published a proposed rule to amend the definition of the term "State" in § 933.1(c) of the Membership Regulation to include American Samoa and the Northern Mariana Islands. See 62 FR 49943 (Sept. 24, 1997). The Finance Board received six comment letters on the proposed rule. Commenters included: one Bank; a representative of a Guamanian housing counseling/advocacy organization who serves on the Bank's Advisory Council; the Congressional representative for American Samoa; the Governor of American Samoa; an American Samoan commercial bank that is a member of the Federal Reserve System with deposits insured by the Federal Deposit Insurance Corporation; and a Northern Mariana Islands public housing corporation.

In the proposed rule, the Finance Board stated that it believes that the term "State" under the Membership Regulation should be defined comprehensively to include all other U.S. Territories, Commonwealths and Dependencies that share a political status similar to that of the specified entities in the statute, *i.e.*, Guam, the U.S. Virgin Islands, and Puerto Rico. In addition, if any specific laws or agreements executed by the United States and particular jurisdictions make the Act applicable to such jurisdictions, then the regulatory definition of the term "State" should be amended to include those jurisdictions, consistent with the laws or agreements.

Accordingly, as described in the proposed rule, the Finance Board undertook a broad analysis of existing and former U.S. Territories, Commonwealths and Dependencies to determine whether any of the jurisdictions satisfy the above requirements. The research revealed that only American Samoa and the Northern Mariana Islands meet the requirements, as further discussed below. In order to ensure that all eligible jurisdictions were included in the

revised definition of "State" for membership purposes, the Finance Board requested commenters to identify any other jurisdictions not included in proposed § 933.1(cc) that have U.S. Territory, Commonwealth, or Dependency status, or that have laws or agreements with the United States that make the Act applicable to such jurisdictions. No other jurisdictions were identified by the commenters as meeting any of these criteria.

#### *B. Designation of Member's State Location for Purposes of Election of Bank Directors*

The Act sets forth specific procedures for the election of directors by the members to the boards of the Banks. See 12 U.S.C. 1427; 12 CFR 932. Each elective directorship is designated by the Finance Board as representing the members located in a particular State. See 12 U.S.C. 1427(b). If the principal place of business of a member is located in a "State" as defined in section 7(e) of the Act, the Finance Board must designate such State as the State in which the member is located for director election purposes. See *id.* section 1427(c). Section 7(e) defines "State," for purposes of section 7, as "the States of the Union, the District of Columbia, and the Commonwealth of Puerto Rico." See *id.* section 1427(e). For members whose principal place of business is not located in a "State" as defined in section 7(e), the Finance Board is required to designate a State in which such members shall be deemed to be located for director election purposes. See *id.* section 1427(c).

American Samoa and the Northern Mariana Islands are not included in the section 7(e) definition of "State." Accordingly, the Finance Board is required to designate a "State" where members with a principal place of business located in American Samoa or the Northern Mariana Islands shall be deemed to be located. The proposed rule amended § 932.11(b) of the Finance Board's regulations to designate Hawaii as that State.

## **II. Analysis of the Final Rule**

#### *A. American Samoa—Section 933.1(cc)*

American Samoa is a Territory of the United States that is administered by the U.S. Department of Interior, and which has enacted its own banking laws. See 48 U.S.C. 1661; Executive Order No. 10264, 16 FR 6419 (June 29, 1951); Title 28, American Samoa Code Ann. (Book 1988). As a U.S. Territory, American Samoa has a political status similar to that of the U.S. Territories of Guam and the U.S. Virgin Islands,

which are included as "States" under the Act and the current Membership Regulation. See 12 U.S.C. 1422(3); 12 CFR 933.1(cc).<sup>1</sup>

Five commenters specifically supported the proposed amendment of the term "State" in § 933.1(c) to include American Samoa. One commenter noted that the condition of much of the private housing in American Samoa is deplorable, household incomes are extremely low, and very little new construction or rehabilitation of housing is occurring. The commenter stated that there is a need for home loans at affordable interest rates in this remote, rural area, and that the Bank System was intended to address such problems. Another commenter stated that by becoming a member of the Seattle Bank, the commenter would gain access to a wide array of competitively priced wholesale funding, as well as community lending programs designed to help meet the low- and moderate-income housing and economic development needs of American Samoa.

For the reasons discussed above, the final rule adopts the proposed amendment without change.

#### *B. The Northern Mariana Islands—Section 933.1(cc)*

The Northern Mariana Islands is a former U.S.-administered Trust Territory that is now a Commonwealth of the United States. As a U.S. Commonwealth, the Northern Mariana Islands has a political status similar to that of the Commonwealth of Puerto Rico, which is included as a "State" under the Act and the current Membership Regulation. See *id.* Moreover, specific provisions of the Covenant Agreement executed by the United States and the Northern Mariana Islands make the Act applicable to the Northern Mariana Islands. See "Covenant To Establish A Commonwealth Of The Northern Mariana Islands In Political Union With The United States Of America," sections 502(a)(1), 502(a)(2) (1986); "The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States," at 278–79 (Aug. 1985); Presidential Proclamation No. 5207, 49 FR 24365 (June 7, 1984) (set forth at 48 U.S.C. 1681 note).

Four commenters specifically supported the proposed amendment of the term "State" in § 933.1(cc) to include the Northern Mariana Islands.

<sup>1</sup> There do not appear to be any laws or contractual provisions in the cession agreements executed by the United States and American Samoa making the Act applicable to American Samoa.

One commenter noted that the Northern Mariana Islands Government and financial institutions operating in the Northern Mariana Islands have limited financial resources available for affordable housing and community development projects. The commenter stated that the proposed amendment would expand opportunities for access to funding assistance for such projects in the Northern Mariana Islands.

For the reasons discussed above, the final rule adopts the proposed amendment without change.

#### *C. Other Pacific Islands*

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau were once U.S.-administered Trust Territories in the Pacific, but now have the status of independent, self-governing foreign nations. Nor do there appear to be any laws or contractual provisions in the Compacts of Free Association executed by the United States and these nations, respectively, that make the Act applicable to these nations. Other existing U.S. Pacific Island Territories generally are either uninhabited or contain tiny, nonpermanent military populations closed to the public. No other jurisdictions were identified by the commenters as having U.S. Territory, Commonwealth, or Dependency status, or having laws or agreements with the United States making the Act applicable to such jurisdictions. Accordingly, the Act would not be applicable to the nations and Territories discussed above, and these jurisdictions are not included in § 933.1(cc) of the final rule.

#### *D. Inclusion of American Samoa and the Northern Mariana Islands in the Seattle Bank District—Appendix to Subpart A of Part 900*

The Appendix to Subpart A of Part 900 of the Finance Board's regulations lists the States which comprise each of the 12 Bank Districts, with a reference to "Pacific Islands" included under Federal Home Loan Bank District 12 (the Seattle Bank District). See Appendix to Subpart A of Part 900—Federal Home Loan Banks. Consistent with the amendments discussed above, the final rule amends the Appendix by replacing the reference to the "Pacific Islands" under the Seattle Bank District with specific references to American Samoa and the Northern Mariana Islands.

*E. Designation of State Location for Members With Principal Place of Business in American Samoa, the Northern Mariana Islands, or Guam—Section 932.11(b)*

For the reasons discussed above, the proposed amendment of § 932.11(b) provided that members with a principal place of business located in American Samoa or the Northern Mariana Islands shall be deemed to be located in Hawaii for purposes of election of Bank directors. One commenter specifically supported this designation. The final rule adopts the proposed amendment without change. The final rule also adopts, without change, the proposed amendment codifying the Finance Board's existing designation of Hawaii as the State where members with a principal place of business in Guam are deemed to be located for director election purposes.

### III. Regulatory Flexibility Act

The final rule implements statutory requirements binding on all Banks and on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those requirements to accommodate small entities. The final rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, see 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

### IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

### List of Subjects

#### 12 CFR Part 900

Organizations and functions (Government agencies).

#### 12 CFR Part 932

Conflicts of interest, Federal home loan banks.

#### 12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts

900, 932 and 933, *Code of Federal Regulations*, as follows:

### PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

1. The authority citation for part 900 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 1422b(a), 1423.

2. The appendix to subpart A of part 900 is designated as appendix A to subpart A of part 900, the appendix heading is revised, and the parenthetical under Federal Home Loan Bank District 12 is revised to read as follows:

#### Appendix A to Subpart A of Part 900—Federal Home Loan Banks

\* \* \* \* \*

FEDERAL HOME LOAN BANK DISTRICT 12 (Alaska, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming)

\* \* \* \* \*

### PART 932—ORGANIZATION OF THE BANKS

3. The authority citation for part 932 is revised to read as follows:

**Authority:** 12 U.S.C. 1422, 1422a, 1422b, 1423, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

4. Section 932.11 is amended by revising paragraph (b) to read as follows:

#### § 932.11 Location of member.

\* \* \* \* \*

(b) For purposes of this part, members with a principal place of business located in the Virgin Islands of the United States shall be deemed to be located in Puerto Rico, and members with a principal place of business located in American Samoa, the Commonwealth of the Northern Mariana Islands, or Guam, shall be deemed to be located in Hawaii.

### PART 933—MEMBERS OF THE BANKS

5. The authority citation for part 933 is revised to read as follows:

**Authority:** 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

6. Section 933.1 is amended by revising paragraph (cc) to read as follows:

#### § 933.1 Definitions.

\* \* \* \* \*

(cc) *State* includes a State of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam,

Puerto Rico, or the Virgin Islands of the United States.

\* \* \* \* \*

By the Board of Directors of the Federal Housing Finance Board.

Dated: December 17, 1997.

**Bruce A. Morrison,**  
Chairman.

[FR Doc. 98-1639 Filed 1-22-98; 8:45 am]

BILLING CODE 6725-01-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-CE-150-AD; Amendment 39-10287; AD 98-01-01]

RIN 2120-AA64

### Airworthiness Directives; Cessna Aircraft Company Models 172R and 182S Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98-01-01, which was sent previously to all known U.S. owners and operators of certain Cessna Aircraft Company (Cessna) Models 172R and 182S airplanes. This AD requires fabricating and installing placards to prohibit operation in instrument flight rules (IFR) conditions and use of the alternate static air source; inspecting the alternate static air source valve to assure that the alternate static air source port is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange; and reworking or replacing as necessary. The AD was the result of reports of improper installation of the identification placard on the alternate static air source. The actions specified by this AD are intended to prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane.

**DATES:** Effective February 2, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98-01-01, issued December 22, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of February 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-150-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joel Ligon, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4138; facsimile (316) 946-4407.

#### **SUPPLEMENTARY INFORMATION:**

#### **Discussion**

On December 22, 1997, the FAA issued priority letter AD 98-01-01, which applies to Cessna Models 172R and 182S airplanes. That AD resulted from reports of improper installation of the identification placard on the alternate static air source. This placard was installed on the valve body in a location that covers the external orifice, which is the inlet for static air reference into the valve.

Cessna discovered the problem during a preflight static check on a Model 172R airplane. Further investigation and a purge of stock at the manufacturing facility revealed 21 valve assemblies having the identification placard installed over the static air reference orifice. Cessna has no way of verifying how many of these assemblies were manufactured and sent to the field with the identification placard installed over the static air reference orifice.

Several of these assemblies have been identified and corrected on the above-referenced airplanes. The FAA has no way of determining which airplanes have the remaining problem alternate static air source assemblies installed without having all of the affected airplanes inspected.

These assemblies are required for flight into instrument flight rules (IFR) conditions as defined in §91.411 of the Federal Aviation Regulations (14 CFR 91.411). Use of these assemblies is optional in visual flight rules (VFR) conditions.

If these assemblies are not identified and reworked or replaced, selection of the alternate air source will cause the altimeter, airspeed, and vertical speed indicators to display erroneous indications. This could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane.

#### **Relevant Service Information**

Cessna has issued Service Bulletin No. SB97-34-02, Revision 1, dated December 22, 1997, which includes:

- Procedures for inspecting the alternate static air source valve to assure that the alternate static air source port is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange;
- Procedures for reworking the alternate static air source valve if the port is restricted; and
- Reference to replacing the alternate static air valve assembly if the valve body separates from the valve flange in accordance with the maintenance manual.

Cessna is providing warranty credit for both labor and parts for required inspections, reworks, and replacements.

#### **The FAA's Determination and Explanation of the AD**

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models 172R and 182S of the same type design, the FAA issued priority letter AD 98-01-01 to prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane. The AD requires the following:

- Immediately fabricating placards that prohibit operation in IFR conditions and prohibit use of the alternate static air source, and installing these placards in the cockpit within the pilot's clear view;
- Eventually inspecting the alternate static air source valve to assure that the alternate static air source port is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange;
- Reworking the alternate static air source assembly if the port is restricted; and
- Replacing the alternate static air source assembly if the valve body separates from the valve flange.

Accomplishment of the inspection and rework is required in accordance

with the previously referenced service information. Accomplishment of the replacement is required in accordance with the applicable maintenance manual.

#### **Determination of the Effective Date of the AD**

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 22, 1997, to all known U.S. operators of certain Cessna Models 172R and 182S airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

#### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-150-AD." The

postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

#### 98-01-01 Cessna Aircraft Company:

Amendment 39-10287; Docket No. 97-CE-150-AD.

**Applicability:** The following airplane models and serial numbers, certificated in any category:

Model 172R Airplanes: serial numbers 17280003 through 17280171, 17280173 through 17280175, 17280177 through 17280179, 17280182 through 17280184,

17280186, 17280189, 17280190, 17280192 through 17280212, 17280214, 17280216 through 17280221, 17280223 through 17280236, 17280239 through 17280251, 17280253 through 17280263, 17280265, 17280268, 17280270 through 17280272, 17280283, 17280297, and 17280301; and

Model 182S Airplanes: serial numbers 18280001, 18280002, 18280004 through 18280045, 18280048 through 18280060, 18280062 through 18280064, 18280067, and 18280070.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated in the body of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued December 22, 1997, which made these actions effective immediately upon receipt.

To prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control of the airplane, accomplish the following:

(a) Prior to further flight after the effective date of this AD, fabricate placards with the following words, using letters at least 1/8-inch in height, and install these placards in the cockpit within the pilot's clear view:

(1) "IFR operation is prohibited."

(2) "Use of the alternate static air source is prohibited."

(b) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 4 calendar months after the effective date of this AD, whichever occurs first, inspect the alternate static air source valve to assure that the alternate static air source valve is not restricted by the identification placard and to assure that the valve body does not separate from the valve flange in accordance with Cessna Service Bulletin No. SB97-34-02, Revision 1, dated December 22, 1997.

(1) If the alternate static air source valve is restricted, prior to further flight after the inspection required by paragraph (b) of this AD, rework the alternate static air source assembly in accordance with Cessna Service Bulletin No. SB97-34-02, Revision 1, dated December 22, 1997.

(2) If the valve body separates from the valve flange, replace the alternate static air source assembly in accordance with the maintenance manual at one of the compliance times presented below (paragraph (b)(2)(i) or (b)(2)(ii) of this AD):

(i) Prior to further flight to eliminate the operating limitations required by the

placards in paragraphs (a), (a)(1), and (a)(2) of this AD; or

(ii) Within the next 25 hours TIS after the inspection provided the operating limitations required by the placards in paragraphs (a), (a)(1), and (a)(2) of this AD are adhered to.

(c) The placard requirements of paragraphs (a), (a)(1), and (a)(2) of this AD may be eliminated when the inspection, rework, and replacement requirements are accomplished as specified in paragraphs (b), (b)(1), and (b)(2) of this AD.

(d) The inspection, rework, and replacement requirements specified in paragraphs (b), (b)(1), and (b)(2) of this AD may be accomplished at any time prior to "within the next 100 hours TIS after the effective date of this AD or within the next 4 calendar months after the effective date of this AD, whichever occurs first."

(e) Within 10 days after the inspection required by paragraph (b) of this AD, send the results of the inspection in writing to the FAA at the address specified in paragraph (h) of this AD. Include the serial number of the airplane and state whether the alternate static air source assembly needed to be reworked or replaced. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056).

(f) Fabricating and installing the placards as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(i) The inspection and rework required by this AD shall be done in accordance with Cessna Service Bulletin No. SB97-34-02, Revision 1, dated December 22, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) This amendment (39-10287) becomes effective on February 2, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98-01-01, issued December 22, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on January 12, 1998.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98-1297 Filed 1-22-98; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-335-AD; Amendment 39-10288; AD 98-02-06]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 777-200 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777-200 series airplanes. This action requires repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. This amendment is prompted by reports of missing or damaged components on the lock link mechanism. The actions specified in this AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation.

**DATES:** Effective February 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 24, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-335-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing

Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Stan Wood, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2772; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** Boeing has advised the FAA of the recent discovery of discrepancies of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG) on several Model 777-200 series airplanes. The discrepancies included missing cotter pins, a missing cotter pin and nut with the bolt migrating out of the joint, and a cotter pin migrating from the bolt end through the nut. Such discrepancies, if not corrected, could result in failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation.

#### **Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 777-32A0015, dated September 4, 1997, which describes procedures for repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG. The alert service bulletin also describes procedures for corrective action for missing or damaged parts.

#### **Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777-200 series airplanes of the same type design, this AD requires accomplishment of the actions specified in the alert service bulletin described previously.

#### **Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

#### **Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

cause exists for making this amendment effective in less than 30 days.

#### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-335-AD." The postcard will be date stamped and returned to the commenter.

#### **Regulatory Impact**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive

Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**98-02-06 Boeing:** Amendment 39-10288. Docket 97-NM-335-AD.

**Applicability:** Model 777-200 series airplanes, line positions 1 through 40 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the lock link mechanism to lock the main landing gear (MLG) in the down position, and consequent collapse of the MLG during ground operation, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to determine the presence and condition of the

cotter pin and nut of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG, in accordance with Boeing Alert Service Bulletin 777-32A0015, dated September 4, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 75 days or 400 flight cycles, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 777-32A0015, dated September 4, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 9, 1998.

Issued in Renton, Washington, on January 15, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 98-1543 Filed 1-22-98; 8:45 am]

BILLING CODE 4910-13-P

#### DEPARTMENT OF COMMERCE

#### Bureau of Economic Analysis

#### 15 CFR Part 806

[Docket No. 970918231-7231-01]

RIN 0691-AA29

#### Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** These final rules revise 15 CFR 806.17 to set forth reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997, and to delete the rules now in 15 CFR 806.17, which were for the last benchmark survey covering 1992.

The BE-12 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under Section 3103(b) of the International Investment and Trade in Services Survey Act, which requires that a benchmark survey of foreign direct investment in the United States be conducted every five years. The last benchmark survey was conducted for 1992. The benchmark survey will obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parents. The data from the quinquennial survey will provide benchmarks for deriving current universe estimates of foreign direct investment from sample data collected in other BEA surveys in nonbenchmark years. The data are needed to measure the economic significance of foreign direct investment in the United States, measure changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. They are also required for compiling the U.S. international transactions, input-output, and national income and product accounts, and for preparing estimates of the international investment position of the United States.

Key changes from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: increasing the exemption level for reporting on the survey to \$3 million (measured by the company's total assets, sales, or net income) from \$1 million in the 1992 survey; increasing the exemption level at which reporting on the long form version of the survey is required from \$50 million to \$100 million; and requiring reporting companies with assets, sales, or net income between \$3 million and \$30 million to report only selected data items on the short form version. In addition, the survey bases industry coding of reporting companies on the new North American Industry Classification System (NAICS) in place of the previous system which was based on the U.S. Standard Industrial Classification system; it collects new information on affiliated services transactions by type of service; and it modifies the detail collected on the

composition of external financing of the reporting enterprise, on exports and imports of goods by product, and on the operations of foreign-owned businesses in individual States.

Forms for the 1997 benchmark survey are scheduled to be mailed out at the end of February 1998. Completed reports will be due to BEA on May 31, 1998.

**EFFECTIVE DATE:** These rules will be effective February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** R. David Belli, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9800.

**SUPPLEMENTARY INFORMATION:** In the October 8, 1997 *Federal Register*, Volume 62, No 195, pages 52515-52518, the Bureau of Economic Analysis published a notice of proposed rulemaking to revise 15 CFR 806.17 to set forth reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The benchmark survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by P.L. 98-573 and P.L. 101-533), hereinafter, "the Act." Section 3103(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter \* \* \*." In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent

and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

Reporting in the survey is mandatory. The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States.

The data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment.

They will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, input-output, and natural income and product accounts, and for preparing estimates of the international investment position of the United States.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for

policy purposes. As specified in the Act, policy areas of particular interest that should be addressed by the survey include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

The survey consists of an instruction booklet, a claim for not filing the BE-12, and the following report forms:

1. Form BE-12(LF) (Long Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than \$100 million;

2. Form BE-12(SF) (Short Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than \$3 million, but not more than \$100 million;

3. Form BE-12 Bank for reporting by U.S. affiliates that are banks with assets, sales, or net income of more than \$3 million.

Although the survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates with assets, sales, and net income each equal to or less than \$3 million are exempt from reporting on Forms BE-12(LF), BE-12(SF), and BE-12 Bank, but are required to file, on Form BE-12(X), a claim for exemption from filing in the benchmark survey.

Key changes from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: increasing the exemption level for reporting on the survey to \$3 million (measured by the company's total assets, sales, or net income) from \$1 million in the 1992 survey; increasing the exemption level at which reporting on Form BE-12(LF) (Long Form) is required from \$50 million to \$100 million; and requiring reporting companies with assets, sales, or net income between \$3 million and \$30 million to report only selected data items on Form BE-12(SF) (Short Form). In addition, industry coding of reporting companies will be based on the new North American Industry Classification System (NAICS) in place of the system which is based on the U.S. Standard Industrial Classification system; new information will be collected on affiliated services transactions by type of service; and the detail collected on the composition of external financing of the reporting enterprise will be modified, along with exports and imports of goods by product, and the operations of foreign-owned businesses in individual States.

#### Executive Order 12612

These rules do not contain policies with Federalism implications sufficient

to warrant preparation of a Federalism assessment under E.O. 12612.

#### Executive Order 12866

These rules have been determined to be not significant for purposes of E.O. 12866.

#### Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608-0042).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number; such a Control Number (0608-0042) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 1 to 715 hours per response, with an average of 22 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608-0042, Washington, DC 20503.

#### Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these rules will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report in the benchmark survey because their assets, sales, and net income are each equal to or less than the \$3 million exemption level below which reporting is not required. Also, under these rules, companies with assets, sales, or net income above \$3 million, but not above \$100 million, will report on the abbreviated BE-12 short form, rather than on the BE-12 long form. In addition, companies with assets, sales, or net income between \$3 million and \$30 million will report only selected data items on the BE-12 short

form. These provisions are intended to significantly reduce the reporting burden on smaller companies.

#### List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investments in the United States, Reporting and recordkeeping requirements.

Dated: December 22, 1997.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

#### PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 22 U.S.C. 3101-3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

##### **§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997.**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1997. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning either Form BE-12(X) within 30 days of its receipt if Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank do not apply, or by completing and returning Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank, whichever is applicable, by May 31, 1998.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or

more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1997 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Long Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(2) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Short Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year; if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$3 million, but no one item exceeded \$100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(3) Form BE-12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1997 BANK must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE-12

survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks which they hold, and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded \$3 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(4) Form BE-12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1997, Claim for Exemption from Filing BE-12(LF), BE-12(SF), and BE-12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 1998, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 1997 benchmark survey), but is exempt from filing Form BE-12(LF), Form BE-12(SF), and Form BE-12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 1997 benchmark survey but that is not otherwise required to file the Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE-12(LF), BE-12(SF), or Form BE-12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed \$3 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 1997 fiscal year but is exempt from filing a completed Form BE-12(LF), BE-12(SF), or Form BE-12 Bank, it must nevertheless file a completed and certified Form BE-12(X).

(f) *Due date.* A fully completed and certified Form BE-12(LF), Form BE-12(SF), or BE-12 Bank is due to be filed with BEA not later than May 31, 1998. A fully completed and certified Form BE-12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 1998, whichever is sooner.

[FR Doc. 98-1541 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-06-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 232

[Release Nos. 33-7495; 34-39558; 35-26818; 39-2361; IC-23002]

RIN 3235-AG96

### Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

**DATES:** Effective: The amendment to 17 CFR part 232 (Regulation S-T) will be effective on January 26, 1998.

Other dates: The new edition of the EDGAR Filer Manual (Release 5.40) will be effective on January 26, 1998. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of January 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** In the Office of Information Technology, Michael E. Bartell at (202) 942-8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942-0633; and for questions concerning Corporation Finance company filings, Margaret R. Black at (202) 942-2933.

**SUPPLEMENTARY INFORMATION:** The Commission today announces the

adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.<sup>1</sup> Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.<sup>2</sup> Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.<sup>3</sup>

In this edition of the EDGAR System and the Filer Manual (Release 5.40), filers will be able to specify either an Internet address or a CompuServe address or both to receive messages on the status of an electronic filing. Since messages sent through Internet may not be as secure as messages sent via CompuServe, certain company information will be omitted from Internet messages for suspended filings and test filings.

Release 5.40 adds two EDGAR submission types for filings submitted by investment companies and deletes or changes the header information of several existing submission types. These changes are being made to accommodate the recent rule and form amendments changing the method by which certain investment companies calculate and pay registration fees.<sup>4</sup> The following submission types have been added for

<sup>1</sup> The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33-6986 (Apr. 1, 1993) [58 FR 18638]. The most recent update to the Filer Manual was implemented on August 23, 1997. See Release No. 33-7432 (July 29, 1997) [62 FR 41841].

<sup>2</sup> See Rule 301 of Regulation S-T (17 CFR 232.301).

<sup>3</sup> See Release Nos. 33-6977 (Feb. 23, 1993) [58 FR 14628], IC-19284 (Feb. 23, 1993) [58 FR 14848], 35-25746 (Feb. 23, 1993) [58 FR 14999], and 33-6980 (Feb. 23, 1993) [58 FR 15009] for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. See also Release No. 33-7122 (Dec. 19, 1994) [59 FR 67752], in which the Commission made the EDGAR rules final and applicable to all domestic registrants. Release No. 33-7427 (July 1, 1997) [62 FR 36450], adopting the most recent minor amendments to the EDGAR rules; and Release No. 33-7472 (Oct. 24, 1997) [62 FR 58647], in which the Commission announced that, as of January 1, 1998, it would not accept paper filings required to be filed electronically.

<sup>4</sup> See Release No. 33-7448 (Sep. 10, 1997) [62 FR 47934]. The rule amendments adopted in that release provided for automatic registration of an indefinite number of securities by all open-end management investment companies and unit investment trusts. As a result, election by these issuers of registration of an indefinite number of shares is no longer necessary or appropriate. Accordingly, all EDGAR submission types used for making that election are being eliminated.

the filing of initial registration statements and pre-effective amendments on Form N-14 by closed-end investment companies: N-14 8C and N-14 8C/A. In addition, the following investment company submission types will no longer be subject to fees and the fee-related tags have been removed: N-1, N-1/A, N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-14, N-14/A, N-14AE, N-14AE/A, S-6, S-6/A, and 487. Finally, submission types 24F-2NT and 24F-3NT (and their amendments) must be filed within 90 days of the registrant's fiscal year end. This is a change from the 60-day requirement in effect prior to October 11, 1997.

The following investment company submission types will no longer be accepted by the EDGAR system: 24F-1, 24F-2EL, 24F-2EL/A, 24F-2TM, 24F-2TM/A, N-1A EL, N-1A EL/A, N-3 EL, N-3 EL/A, N-4 EL, N-4 EL/A, S-6EL24, S-6EL24/A, 485A24E, 485A24F, 485B24E, 485B24F, 485BXT, 485BXTF, N14EL24, N14EL24/A, N14AE24, and N14AE24/A.

Rule 301 of Regulation S-T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on January 26, 1998.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is <http://www.sec.gov/asec/ofis/filerman.htm>. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.<sup>5</sup> It follows that the requirements of the Regulatory Flexibility Act<sup>6</sup> do not apply.

The effective date for the updated Filer Manual and the rule amendments is January 26, 1998. In accordance with the Administrative Procedure Act 5

U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 5.40 on January 24, 1998. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers.

#### Statutory Basis

The amendment to Regulation S-T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,<sup>7</sup> Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,<sup>8</sup> Section 20 of the Public Utility Holding Company Act of 1935,<sup>9</sup> Section 319 of the Trust Indenture Act of 1939,<sup>10</sup> and Sections 8, 30, 31, and 38 of the Investment Company Act.<sup>11</sup>

#### List of Subjects in 17 CFR Part 232

Incorporation by reference, Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

#### Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

2. Section 232.301 is revised to read as follows:

#### § 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The January 1998 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.40)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5

U.S.C. 552(a) and 1 CFR part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638-8241. Electronic format copies are available through the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is <http://www.sec.gov/asec/ofis/filerman.htm>. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 576-4247.

By the Commission.

Dated: January 20, 1998.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-1646 Filed 1-22-98; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 175 and 178

[Docket No. 95F-0210]

#### Indirect Food Additives: Adhesives and Components of Coatings; Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-(2,5-thiophenediyl)-bis(5-tert-butylbenzoxazole) as an optical brightener in pressure-sensitive adhesives and in all polymers used in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** The regulation is effective January 23, 1998. Submit written objections and requests for a hearing by February 23, 1998.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

<sup>5</sup> 5 U.S.C. 601-612.

<sup>6</sup> 5 U.S.C. 553(b).

<sup>7</sup> 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

<sup>8</sup> 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78ll.

<sup>9</sup> 15 U.S.C. 79t.

<sup>10</sup> 15 U.S.C. 77sss.

<sup>11</sup> 15 U.S.C. 80a-8, 80a-29, 80a-30 and 80a-37.

**FOR FURTHER INFORMATION CONTACT:** John R. Bryce, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3023.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of August 18, 1995 (60 FR 43157), FDA announced that a food additive petition (FAP 5B4471) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,2'-(2,5-thiophenediyl)-bis(5-*tert*-butylbenzoxazole) in all polymers intended for use in food packaging and in adhesives complying with § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125).

In order to clarify the use of this additive as an optical brightener, the petition also proposed to list the use of the additive in adhesives complying with § 175.105 (21 CFR 175.105) in § 178.3297. Because the additive is currently listed in § 175.105 without limitation, use of the additive as an optical brightener in adhesives complying with § 175.105 is a currently permitted use that requires no further safety evaluation. Accordingly, this final rule lists the use of the additive in adhesives complying with § 175.105 in § 178.3297 *Colorants for polymers*.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as an optical brightener in pressure-sensitive adhesives in § 175.125, and in all polymers intended for use in food packaging in § 178.3297, is safe; that the additive will have the intended technical effect; and that therefore, the regulations in §§ 175.125 and 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h),

the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before February 23, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects

##### 21 CFR Part 175

Adhesives, Food additives, Food packaging.

##### 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 175 and 178 are amended to read as follows:

#### PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.125 is amended by adding paragraph (a)(7) and by revising paragraph (b)(1) to read as follows:

##### § 175.125 Pressure-sensitive adhesives.

\* \* \* \* \*

(a) \* \* \*

(7) 2,2'-(2,5-Thiophenediyl)-bis(5-*tert*-butylbenzoxazole) (CAS Reg. No. 7128-64-5) as an optical brightener at a level not to exceed 0.05 percent by weight of the finished pressure-sensitive adhesive.

\* \* \* \* \*

(b) \* \* \*

(1) Substances listed in paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), and (a)(7) of this section, and those substances prescribed by paragraph (a)(4) of this section that are not identified in paragraph (b)(2) of this section.

\* \* \* \* \*

#### PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

4. Section 178.3297 is amended in the table in paragraph (e) by revising the entry for "2,2'-(2,5-Thiophenediyl)-bis(5-*tert*-butylbenzoxazole)" under the headings "Substances" and "Limitations" to read as follows:

##### § 178.3297 Colorants for polymers.

\* \* \* \* \*

(e) \* \* \*

Substances	Limitations
<p>* * *</p> <p>2,2'-(2,5-Thiophenediyl)-bis(5-<i>tert</i>-butylbenzoxazole) (CAS Reg. No. 7128-64-5).</p> <p>* * *</p>	<p>* * *</p> <p>For use as an optical brightener:</p> <ol style="list-style-type: none"> <li>1. In all polymers at levels not to exceed 0.015 percent by weight of the polymer. The finished articles are to contact food only under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.</li> <li>2. In all polymers at levels not to exceed 0.05 percent by weight of the polymer. The finished articles shall contact foods only of the types identified in Table 1 of § 176.170(c) of this chapter, under Categories I, II, IV-B, VI-A, VI-B, VI-C, VII-B, and VIII under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.</li> <li>3. In adhesives complying with § 175.105 of this chapter and in pressure-sensitive adhesives complying with § 175.125 of this chapter.</li> </ol> <p>* * *</p>

Dated: January 5, 1998.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 98-1539 Filed 1-22-98; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 820

[Docket No. 90N-0172]

RIN 0910-AA09

#### Quality System Design Control; Open Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Announcement of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following meeting: Quality System Design Control open public meeting. The topic to be discussed is the midcourse review of the new design control requirements. This action is being taken in accordance with the current good manufacturing (CGMP) final rule that appeared in the **Federal Register** of October 7, 1996.

**DATES:** The meeting will be held on, February 2, 1998, from 8:30 a.m. to 4:30 p.m. Written requests for oral presentations by January 28, 1998.

**ADDRESSES:** The meeting will be held at the National Institutes of Health (NIH), Natcher Auditorium, 45 Center Dr., Bldg. 45, Bethesda, MD. Contact for any changes: (1) Via Internet at <http://www.fda.gov/cdrh/gmp>, or (2) telephone toll-free at 1-800-638-2041.

#### FOR FURTHER INFORMATION CONTACT:

*For information regarding registration:* Mary Ann Fitzgerald, or

*For information regarding the meeting or requests for oral presentations:*

Kimberly A. Trautman, Center for Devices and Radiological Health (HFZ-341), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301-594-4648, FAX 301-594-4672.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 7, 1996 (61 FR 52602), FDA stated that it would hold an open public meeting in early 1998 to discuss, and to further explore any concerns industry might be having in implementing the new design control requirements. Specifically, the results of the first several months of design control inspections will be reviewed and any adjustments to the designated inspectional strategy of guidances will be addressed. Also, FDA will evaluate the information gathered at this point and determine if design control requirements, as written in the final rule, are appropriate to obtain the goals expressed in the preamble. Particular attention will be paid to clarity of information obtained, the appropriateness of the information collected with respect to the design control requirements, the manner in which the investigators are writing their observations, and any requirements that seem to be giving manufacturers a problem or where there might be misunderstandings as to what the regulation requires. It is important to note that only the requirements and issues surrounding design controls codified will be addressed.

Fax written requests for oral presentations, (including name, title, firm name, address, telephone, and fax number), and an outline of your

presentation to the contact person listed above by January 28, 1998. No telephone requests will be accepted. You will be notified by facsimile whether or not the speaker's list is full. If you cannot be reached by facsimile, please note that in your request.

If you need special accommodations due to a disability, please contact Georgette Smith, NIH Conference Center, 301-496-9966, at least 7 days in advance.

Dated: January 20, 1998.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 98-1822 Filed 1-21-98; 3:22 pm]

BILLING CODE 4160-01-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 104

[DoD Instruction 1205.12]

RIN 0790-AG52

#### Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part identifies DoD guidelines for implementing policy, assigns responsibilities, and prescribes procedures for informing Service members of their reemployment protections. It updates, codifies, and strengthens the civilian employment rights and benefits of Service members and individuals who apply for uniformed service, and specifies the

obligations of Service members and applicants for uniformed service.

**DATES:** This part is effective February 1, 1998. Comments must be received no later than March 24, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Colonel Rowan W. Bronson, OASD/RA (M&P), (703) 693-7490.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 104 does not pertain to a military or foreign affairs function of the United States. It is not a significant regulatory action. This final rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it is related to a military or foreign affairs function of the United States. It would not, if promulgated, have a significant economic impact on a substantial number of small entities. The law provides employment and reemployment protections for Active and Reserve Component members, as well as individuals who apply to be members of the Uniformed Services.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been determined that this part does not impose any reporting or recordkeeping requirements on the public under the Paperwork Reduction Act of 1995.

**List of Subjects in 32 CFR Part 104**

Government employees, Military personnel.

Accordingly, Title 32, Chapter 1, 32 CFR part 104, is added to read as follows:

**PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS OF APPLICANTS FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES**

**Sec.**

- 104.1 Purpose.
- 104.2 Applicability.
- 104.3 Definitions.
- 104.4 Policy.
- 104.5 Responsibilities.
- 104.6 Procedures.

Appendix A to part 104—Civilian Employment And Reemployment Rights, Benefits And Obligations For Applicants For, And Service Members And Former Service Members Of The Uniformed Services

Appendix B to part 104—Sample Employer Notification Of Uniformed Service

**Authority:** 10 U.S.C. 1161.

**§ 104.1 Purpose.**

This part:

(a) Updates implementation policy, assigns responsibilities, and prescribes procedures for informing Service members who are covered by the provisions of 38 U.S.C chapter 43 and individuals who apply for uniformed service, of their civilian employment and reemployment rights, benefits and obligations.

(b) Implements 38 U.S.C. chapter 43, which updated, codified, and strengthened the civilian employment and reemployment rights and benefits of Service members and individuals who apply for uniformed service, and specifies the obligations of Service members and applicants for uniformed service.

**§ 104.2 Applicability.**

This part applies to the Office of the Secretary of Defense; the Military Departments, including the Coast Guard when it is not operating as a Military Service in the Department of the Navy by agreement with the Department of Transportation; the Chairman of the Joint Chiefs of Staff; and the Defense Agencies (referred to collectively in this part as "the DoD Components"). The term "Military Departments," as used in this part, refers to the Departments of the Army, Navy, and Air Force. The term "Secretary concerned" refers to the Secretaries of the Military Departments and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Department of the Navy. The term "Military Services" refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

**§ 104.3 Definitions.**

**Critical mission.** An operational mission that requires the skills or resources available in a Reserve component or components.

**Critical requirement.** A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission, operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership positions within his or her Reserve component.

**Escalator position.** This is established by the principle that the returning Service member is entitled to the position of civilian employment that he or she would have attained had he or she remained continuously employed by that civilian employer. This may be a position of greater or lesser responsibilities, to include a layoff status, when compared to the employees of the same seniority and status employed by the company.

**Impossible or unreasonable.** For the purpose of determining when providing advance notice of uniformed service to an employer is impossible or unreasonable, the unavailability of an employer or employer representative to whom notification can be given, an order by competent military authority to report for uniformed service within forty-eight hours of notification, or other circumstances that the Office of the Assistant Secretary of Defense for Reserve Affairs may determine are impossible or unreasonable are sufficient justification for not providing advance notice of pending uniformed service to an employer.

**Military necessity.** For the purpose of determining when providing advance notice of uniformed service is not required, a mission, operation, exercise or requirement that is classified, or a pending or ongoing mission, operation, exercise or requirement that may be compromised or otherwise adversely affected by public knowledge is sufficient justification for not providing advance notice to an employer.

**Non-career service.** The period of active uniformed service required to complete the initial uniformed service obligation; a period of active duty or full-time National Guard duty that is for a specified purpose and duration with no expressed or implied commitment for continued active duty; or participation in a Reserve component as a member of the Ready Reserve performing annual training, active duty for training or inactive duty training.

Continuous or repeated active uniformed service or full-time National Guard duty that results in eligibility for a regular retirement from the Armed Forces is not considered non-career service.

*Officer.* For determining those Service officials authorized to provide advance notice to a civilian employer of pending uniformed service by a Service member or an individual who has applied for uniformed service, an officer shall include all commissioned officers, warrant officers, and non-commissioned officers authorized by the Secretary concerned to act in this capacity.

*Uniformed service.* Performance of duty on a voluntary or involuntary basis in the Army, the Navy, the Air Force, the Marine Corps or the Coast Guard, including their Reserve components, when the Service member is engaged in active duty, active duty for special work, active duty for training, initial active duty for training, inactive duty training, annual training or full-time National Guard duty, and, for purposes of this part, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform such duty.

#### **§ 104.4 Policy.**

It is DoD policy to support non-career service by taking appropriate actions to inform and assist uniformed Service members and former Service members who are covered by the provisions of 38 U.S.C. chapter 43, and individuals who apply for uniformed service of their rights, benefits, and obligations under 38 U.S.C. Chapter 43. Such actions include:

(a) Advising non-career Service members and individuals who apply for uniformed service of their employment and reemployment rights and benefits provided in 38 U.S.C. chapter 43, as implemented by this part, and the obligations they must meet to exercise those rights.

(b) Providing assistance to Service members, former Service members and individuals who apply for uniformed service in exercising employment and reemployment rights and benefits.

(c) Providing assistance to civilian employers of non-career Service members in addressing issues involving uniformed service as it relates to civilian employment or reemployment.

(d) Considering requests from civilian employers of members of the National Guard and Reserve to adjust a Service member's scheduled absence from civilian employment because of uniformed service or make other

accommodations to such requests, when it is reasonable to do so.

(e) Documenting periods of uniformed service that are exempt from a Service member's cumulative 5-year absence from civilian employment to perform uniformed service as provided in 38 U.S.C. chapter 43 and implemented by this part.

(f) Providing, at the Service member's request, necessary documentation concerning a period or periods of service, or providing a written statement that such documentation is not available, that will assist the Service member in establishing civilian reemployment rights, benefits and obligations.

#### **§ 104.5 Responsibilities.**

(a) The Assistant Secretary of Defense for Reserve Affairs, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) In conjunction with the Departments of Labor (DoL) and Veterans Affairs, the Office of Personnel Management (OPM), and other appropriate Departments and activities of the executive branch, determine actions necessary to establish procedures and provide information concerning civilian employment and reemployment rights, benefits and obligations.

(2) Establish procedures and provide guidance to the Secretaries concerned about civilian employment and reemployment rights, benefits and obligations of Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service as provided in 38 U.S.C. chapter 43. This responsibility shall be carried out in coordination with DoL, OPM, and the Federal Retirement Thrift Investment Board.

(3) Monitor compliance with 38 U.S.C. chapter 43 and this part.

(4) Publish in the **Federal Register**, DoD policies and procedures established to implement 38 U.S.C. chapter 43.

(b) The Secretaries of the Military Departments and the Commandant of the Coast Guard shall establish procedures to:

(1) Ensure compliance with this part.

(2) Inform Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service of the provisions of 38 U.S.C. chapter 43 as implemented by this part.

(3) Provide available documentation, upon request from a Service member or former Service member, that can be used to establish reemployment rights of the individual.

(4) Specify, as required, and document those periods of active duty that are exempt from the 5-year cumulative service limitation that a Service member may be absent from a position of civilian employment while retaining reemployment rights.

(5) Provide assistance to Service members and former Service members who are covered by the provisions of 38 U.S.C. chapter 43, and individuals who apply for uniformed service in exercising employment and reemployment rights.

(6) Provide assistance, as appropriate, to civilian employers of Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service.

(7) Cooperate with the DoL in discharging its responsibilities to assist persons with employment and reemployment rights and benefits.

(8) Cooperate with OPM in carrying out its placement responsibilities under 38 U.S.C. chapter 43.

#### **§ 104.6 Procedures.**

The Secretaries of the Military Departments and the Commandant of the Coast Guard shall:

(a) Inform individuals who apply for uniformed service and members of a Reserve component who perform or participate on a voluntary or involuntary basis in active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training and full-time National Guard duty, of their employment and reemployment rights, benefits, and obligations as provided under 38 U.S.C. chapter 43 and described in Appendix A of this part. Other appropriate materials may be used to supplement the information contained in Appendix A of this part.

(1) Persons who apply for uniformed service shall be advised that DoD strongly encourages applicants to provide advance notice in writing to their civilian employers of pending uniformed service or any absence for the purpose of an examination to determine the person's fitness to perform uniformed service. Providing written advance notice is preferable to verbal advance notice since it is easier to establish that this basic prerequisite to retaining reemployment rights was fulfilled. Regardless of the means of providing advance notice, whether verbal or written, it should be provided as early as practicable.

(2) Annually and whenever called to duty for a contingency operation, advise Service members who are participating in a Reserve component of:

(i) The requirement to provide advance written or verbal notice to their civilian employers for each period of military training, active and inactive duty, or full-time National Guard duty.

(A) Reserve component members shall be advised that DoD strongly encourages that they provide advance notice to their civilian employers in writing for each period of pending uniformed service. Providing written advance notice is preferable to verbal advance notice since it easily establishes that this prerequisite to retaining reemployment rights was fulfilled.

(B) Regardless of the means of providing advance notice, whether written or verbal, it should be provided as early as practicable. DoD strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.

(C) The advance notice requirement can be met by providing the employer with a copy of the unit annual training schedule or preparing a standardized letter. The sample employer notification letter in Appendix B of this part may be used for this purpose.

(ii) The 5-year cumulative limit on absences from their civilian employment due to uniformed service and exemptions to that limit.

(iii) The requirements for reporting or submitting application to return to their position of civilian employment.

(iv) Their general reemployment rights and benefits.

(v) The option for continuing employer provided health care, if the employer provides such a benefit.

(vi) The opportunity to use accrued leave in order to perform uniformed service.

(vii) Who they may contact to obtain assistance with employment and reemployment questions and problems.

(b) Inform Service members who are covered by the provisions of 38 U.S.C. Chapter 43, upon completion of an extended period of active duty and before separation from active duty of their employment and reemployment rights, benefits, and obligations as provided under 38 U.S.C. Chapter 43. This shall, as a minimum, include notification and reporting requirements for returning to employment with their civilian employer. While Appendix A of this part provides the necessary information to satisfy this requirement, other appropriate materials may be used to supplement this information.

(c) Issue orders that span the entire period of service when ordering a member of the National Guard or Reserve to active duty for a mission or requirement. Order modifications shall

be initiated, as required, to ensure continuous active duty should the period required to complete the mission or requirement change.

(d) Document the length of a Service member's initial period of military service obligation performed on active duty.

(e) Determine and certify in writing those additional training requirements not already exempt for the 5-year cumulative service limit which are necessary for the professional development, or skill training or retraining for members of the National Guard or Reserve. Once the Secretary concerned certifies those training requirements, performance of uniformed service to complete a certified training requirement is exempt from the 5-year cumulative service limit.

(f) Determine those periods of active duty when a Service member is ordered to, or retained on, active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress. If the purpose of the order to, or retention on, active duty is for the direct or indirect support of the war or national emergency, then the orders of the Service member should be so annotated, since that period of service is exempt from the 5-year cumulative service limit established in 38 U.S.C. Chapter 43.

(g) Determine those periods of active duty performed by a member of the National Guard or Reserve that are designated by the Secretary concerned as a critical mission or critical requirement, and for that reason are exempt from the 5-year cumulative service limit. The authority for determining what constitutes a critical mission or requirement shall not be delegated below the Assistant Secretary level or the Commandant of the Coast Guard. The designation of a critical requirement to gain the necessary experience to qualify for key senior leadership positions shall be used judiciously, and the necessary experience and projected key leadership positions fully documented. This authority shall not be used to grant exemptions to avoid the cumulative 5-year service limit established by 38 U.S.C. Chapter 43 or to extend individuals in repeated statutory tours. The Assistant Secretary of Defense for Reserve Affairs shall be notified in writing of all occasions in which a Service member is granted more than one exemption for a critical requirement when the additional exemption(s) extend the Service member beyond the 5-year cumulative service limit established in 38 U.S.C. Chapter 43.

(h) When appropriate, ensure that orders to active duty or orders retaining members on active duty specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from the 5-year cumulative service limit provided in 38 U.S.C. Chapter 43. If circumstances arise that prevent placing this authority on the orders, the authority shall be included in a separation document and retained in the Service member's personnel file.

(i) Ensure that appropriate documents verifying any period of service exempt from the 5-year cumulative service limit are place in the Service member's personnel record or other appropriate record.

(j) Document those circumstances that prevent a Service member from providing advance notification of uniformed service to a civilian employer because of military necessity or when advance notification is otherwise impossible or unreasonable, as defined in § 104.3.

(k) Designate those officers, as defined in § 104.3, who are authorized by the Secretary concerned to provide advance notification of service to a civilian employer on behalf of a Service member or applicant for uniformed service.

(l) Provide documentation, upon request from a Service member or former Service member, that may be used to satisfy the Service member's entitlement to statutory reemployment rights and benefits. Appropriate documentation may include, as necessary:

(1) The inclusive dates of the initial period of military service obligation performed on active duty.

(2) Any period of service during which a Service member was required to serve because he or she was unable to obtain a release from active duty though no fault of the Service member.

(3) The cumulative length of all periods of active duty performed.

(4) The authority under which a Service member was ordered to active duty when such service was exempt from the 5-year cumulative service limit.

(5) The date the Service member was last released from active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training or full-time National Guard duty. This documentation establishes the timeliness of reporting to, or submitting application to return to, a position of civilian employment.

(6) Whether service requirements prevent providing a civilian employer

with advance notification of pending service.

(7) That the Service member's entitlement to reemployment benefits has not been terminated because of the character of service as provided in 38 U.S.C. 4304.

(8) When appropriate, a statement that sufficient documentation does not exist.

(m) Establish a central point of contact at a headquarters or regional command who can render assistance to active duty Service members and applicants for uniformed service about employment and reemployment rights, benefits and obligations.

(n) Establish points of contact in each Reserve component headquarters or Reserve regional command, and each National Guard State headquarters who can render assistance to:

(1) Members of the National Guard or Reserve about employment and reemployment rights, benefits and obligations.

(2) Employers of National Guard and Reserve members about duty or training requirements arising from a member's uniformed service or service obligation.

(o) A designated Reserve component representative shall consider, and accommodate when it does not conflict with military requirements, a request from a civilian employer of a National Guard and Reserve member to adjust a Service member's absence from civilian employment due to uniformed service when such service has an adverse impact on the employer. The representative may make arrangements other than adjusting the period of absence to accommodate such a request when it serves the best interest of the military and is reasonable to do so.

#### **Appendix A to Part 104—Civilian Employment and Reemployment Rights, Benefits and Obligations for Applicants for, and Service Members and Former Service Members of the Uniformed Services**

##### **A. Scope of Coverage**

1. The Uniformed Services Employment and Reemployment Rights Act (USERRA) which is codified in 38 U.S.C. Chapter 43 provides protection to anyone absent from a position of civilian employment because of uniformed service if:

a. Advance written or verbal notice was given to the civilian employer.

(1) Advance notice is not required if precluded by military necessity, or is otherwise unreasonable or impossible.

(2) DoD strongly encourages Service members and or applicants for service to provide advance notice to their civilian employer in writing for each period of pending uniformed service. Providing written advance notice is preferable to verbal advance notice since it easily establishes that

this prerequisite to retaining reemployment rights was fulfilled. Regardless of the means of providing advance notice, whether written or verbal, it should be provided as early as practicable. Also, DoD strongly recommends that Reserve component members provide advance notice to their civilian employers at least 30 days in advance when it is feasible to do so. The advance notice requirement can be met by providing the employer with a copy of the unit annual training schedule or preparing a standardized letter. The sample employer notification letter in Appendix B of this part may be used for this purpose;

b. The cumulative length of absences does not exceed 5 years;

c. The individual reports to, or submits an application for reemployment, within the specified period based on duration of services as described in section D of this Appendix; and,

d. The person's character of service was not disqualifying as described in paragraphs A.2.d. and e. of this appendix.

2. A civilian employer is not required to reemploy a person if:

a. The civilian employment was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

b. The employer's circumstances have so changed as to make reemployment impossible or unreasonable.

c. The reemployment imposes an undue hardship on the employer in the case of an individual who:

(1) Has incurred a service connected disability; or,

(2) Is not qualified for the escalator position or the position last held, and cannot become qualified for any other position of lesser status and pay after a reasonable effort by the employer to qualify the person for such positions.

d. The Service member or former Service member was separated from a uniformed service with a dishonorable or bad conduct discharge, or separated from a uniformed service under other than honorable conditions.

e. An officer dismissed from any Armed Force or dropped from the rolls of any Armed Force as prescribed under 10 U.S.C. 1161.

f. The cumulative length of service exceeds five years and no portion of the cumulative five years of uniformed service falls within the exceptions described in section C. of this Appendix.

g. An employer asserting that he or she is not required to reemploy an individual because the employment was for a brief, non-recurrent period, or reemployment is impossible or unreasonable, or reemployment imposes an undue hardship on the employer, that employer has the burden of proving his or her assertion.

3. Entitlement to protection under 38 U.S.C. Chapter 43 does not depend on the timing, frequency, and duration of training or uniformed service.

##### **B. Prohibition Against Discrimination and Acts of Reprisal**

1. A person who is a member of, applies to be a member of, has performed, applies to

perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any employment benefit by an employer on the basis of that membership, an application for membership, performance of service, or an obligation for service in the uniformed services.

2. A person, including a non-Service member, shall not be subject to employment discrimination or any adverse employment action because he or she has taken an action to enforce a protection afforded a Service member, has testified or made a statement in or in connection with any proceeding concerning employment and reemployment rights of a service member, has assisted or participated in an investigation, or has otherwise exercised any right provided by 38 U.S.C. Chapter 43.

3. An employer shall be considered to have engaged in an act of discrimination if an individual's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service or obligation.

##### **C. Exceptions to the Maximum Period of Service for Coverage**

In order to retain reemployment rights and benefits provided by 38 U.S.C. Chapter 43, the cumulative length of absences from the same employer cannot exceed 5 years. Not counted toward this limit is:

1. Service beyond 5 years if required to complete an initial service obligation;

2. Service during which an individual was unable to obtain release orders before the expiration of the 5-year cumulative service limit through no fault of his or her own;

3. Inactive duty training; annual training; ordered to active duty for unsatisfactory participation; active duty by National Guardsmen for encampments, maneuvers, field operations or coastal defense; or to fulfill additional training requirements, as determined by the Secretary concerned, for professional skill development, or to complete skill training or retraining;

4. Involuntary order or call to active duty, or retention on active duty;

5. Ordered to or retained on active duty during a war or national emergency declared by the President or Congress;

6. Ordered to active duty in support of an operational mission for which personnel have been involuntarily called to active duty;

7. Performing service in support of a critical mission or requirement, as determined by the Secretary concerned;

8. Performing service in the National Guard when ordered to active duty by the President to suppress an insurrection or rebellion, repel an invasion, or execute laws of the United States; and,

9. Voluntary recall to active duty of retired regular Coast Guard officers or retired enlisted Coast Guard members.

#### D. Applications for Reemployment

1. For service of 30 days or less, or for an absence for an examination to determine the individual's fitness to perform uniformed service, the Service member or applicant must report to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of service or the examination, after allowing for an eight hour rest period following safe transportation to his or her residence.

2. For service of 31 days or more but less than 181 days, the Service member must submit an application for reemployment not later than 14 days after completion of service, or by the next full calendar day when submitting an application within the 14 day limit was impossible or unreasonable through no fault of the Service member.

3. For service of 181 days or more, the Service member must submit an application for reemployment not later than 90 days after the completion of service.

4. If hospitalized or convalescing from an illness or injury incurred or aggravated during service, the Service member must, at the end of the period necessary for recovery, follow the same procedures, based on length of service, as described in sections D.1. through D.3. of this appendix. The period of hospitalization or convalescence may not normally exceed 2 years.

5. Anyone who fails to report or apply for reemployment within the specified period shall not automatically forfeit entitlement to reemployment rights and benefits, but is subject to the rules of conduct, established policies, general practices of the employer pertaining to explanations and discipline because of an absence from scheduled work.

#### E. Documentation Upon Return

1. If service is for 31 days or more, a Service member must provide documentation, upon request from the employer, that establishes:

a. He or she made application to return to work within the prescribed time period;

b. He or she has not exceeded the 5-year cumulative service limit; and

c. His or her reemployment rights were not terminated because of character of service as described in paragraphs A.2.d. and e. of this appendix.

2. Failure to provide documentation cannot serve as a basis for denying reemployment to the Service member, former Service member, or applicant if documentation does not exist or is not readily available at the time of the employer's request. However, if after reemployment, documentation becomes available that establishes that the Service member or former Service member does not meet one or more of the requirements contained in section E.1. of this appendix, the employer may immediately terminate the employment.

#### F. Position To Which Entitled Upon Reemployment

1. Reemployment position for service of 90 days or less:

a. The position the person would have attained if continuously employed (the "escalator" position) and if qualified to perform the duties; or,

b. The position in which the person was employed in when he or she departed for uniformed service, but only if the person is not qualified to perform the duties of the escalator position, despite the employer's reasonable efforts to qualify the person for the escalator position.

2. Reemployment position for service of 91 days or more:

a. The escalator position, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or,

b. The position in which the person was employed in when he or she departed for uniformed service or a position of like seniority, status and pay, the duties of which the person is qualified to perform, but only if the person is not qualified to perform the duties of the escalator position after the employer has made a reasonable effort to qualify the person for the escalator position.

3. If a person cannot become qualified, after reasonable efforts by the employer to qualify the person, for either the escalator position or the position formerly occupied by the employee as provided in sections F.1. and F.2. of this appendix, for any reason (other than disability), the person must be employed in any other position of lesser status and pay that the person is qualified to perform, with full seniority.

#### G. Position To Which Entitled if Disabled

If a person who is disabled because of service cannot (after reasonable efforts by the employer to accommodate the disability) be employed in the escalator position, he or she must be reemployed:

1. In any other position that is equivalent to the escalator position in terms of seniority, status, and pay that the person is qualified or can become qualified to perform with reasonable efforts by the employer; or,

2. In a position, consistent with the person's disability, that is the nearest approximation to the position in terms of seniority, status, and pay to the escalator or equivalent position.

#### H. Reemployment by the Federal Government

1. A person who was employed by a Federal Executive Agency when he or she departed for uniformed service must be reemployed using the same order of priorities as prescribed in sections F. and G. of this appendix as appropriate. If the Director of OPM determines that the Federal Executive Agency that employed the person no longer exists and the functions have not been transferred to another Federal Executive Agency, or it is impossible or unreasonable for the agency to reemploy the person, the Director of OPM shall identify a position of like seniority, status, and pay at another Federal Executive Agency that satisfies the reemployment criteria established for private sector employers, sections F. and G. of this appendix, and for which the person is qualified and ensure that the person is offered such position.

2. If a person was employed by the Judicial Branch or the Legislative Branch of the Federal Government when he or she departed for uniformed service, and the employer determines that it is impossible or

unreasonable to reemploy the person, the Director of OPM shall, upon application by the person, ensure that an offer of employment in a Federal Executive Agency is made.

3. If the Adjutant General of a State determines that it is impossible or unreasonable to reemploy a person who was employed as a National Guard technician, the Director of OPM shall, upon application by the person, ensure that an offer of employment in a Federal Executive Agency is made.

#### I. Reemployment by Certain Federal Agencies

1. The heads of the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency, and, as determined by the President, any Executive Agency or unit thereof, the principal function of which is to conduct foreign intelligence or counterintelligence activities, shall prescribe procedures for reemployment rights for their agency that are similar to those prescribed for private and other Federal agencies.

2. If an appropriate officer of an agency referred to in subsection I.1. of this appendix determines that reemployment of a person who was an employee of that agency when he or she departed for uniformed service is impossible or unreasonable, the agency shall notify the person and the Director of OPM. The Director of OPM shall, upon application by that person, ensure that the person is offered employment in a position in a Federal Executive Agency.

#### J. General Rights and Benefits

1. A person who is reemployed under 38 U.S.C. Chapter 43 is entitled to the seniority, and other rights and benefits determined by seniority that the person had upon commencing uniformed service, and any additional seniority, and rights and benefits he or she would have attained if continuously employed.

2. A person who is absent by reason of uniformed service shall be deemed to be on furlough or leave of absence from his or her civilian employer and is entitled to such other rights and benefits not determined by seniority as generally provided by the employer to employees on furlough or leave of absence having similar seniority, status and pay who are also on furlough or leave of absence, as provided under a contract, policy, agreement, practice or plan in effect during the Service member's absence because of uniformed service.

3. The individual may be required to pay the employee cost, if any, of any funded benefit continued to the same extent other employees on furlough or leave of absence are required to pay.

#### K. Loss of Rights and Benefits

If, after being advised by his or her employer of the specific rights and benefits to be lost, a Service member, former Service member or applicant of uniformed service knowingly provided written notice of intent not to seek reemployment after completion of uniformed service, he or she is no longer entitled to any non-seniority based rights and

benefits. This includes all non-seniority based rights and benefits provided under any contract, plan, agreement, or policy in effect at the time of entry into uniformed service or established while performing such service, and are generally provided by the employer to employees having similar seniority, status and pay who are on furlough or leave of absence.

#### **L. Retention Rights**

A person who is reemployed following uniformed service cannot be discharged from employment, except for cause:

1. Within 1 year after the date of reemployment if that person's service was 181 days or more; or,
2. Within 180 days after the date of reemployment if such service was 31 days or more but less than 181 days.

#### **M. Accrued Leave**

During any period of uniformed service, a person may, upon request, use any vacation, annual leave, or similar leave with pay accrued before the commencement of that period of service.

#### **N. Health Plans**

An employer who provides employee health plan coverage, including group health plans, must allow the Service member to elect to continue personal coverage, and coverage for his or her dependents under the following circumstances:

1. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of:
  - a. The 18 month period beginning on the date on which the person's absence begins; or
  - b. The day after the date on which the person was required to apply for or return to a position or employment as specified in section D. of this appendix, and fails to do so.

2. A person who elects to continue health plan coverage may be required to pay up to 102 percent of the full premium under the plan, except a person on active duty for 30 days or less cannot be required to pay more than the employee's share, if any, for the coverage.

3. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment if one would not have been imposed had coverage not been terminated because of service. However, an exclusion or waiting period may be imposed for coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, the performance of uniformed service.

#### **O. Employee Pension Benefit Plans**

1. This section applies to individuals whose pension benefits are not provided by the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System (CSRS), or a right provided under any Federal or State law governing pension benefits for governmental employees.

2. A person reemployed after uniformed service shall be treated as if no break in service occurred with the employer(s) maintaining the employee's pension benefit

plan. Each period of uniformed service, upon reemployment, shall be deemed to constitute service with the employer(s) for the purpose of determining the nonforfeitability of accrued benefits and accrual of benefits.

3. An employer reemploying a Service member or former Service member under 38 U.S.C. Chapter 43 is liable to the plan for funding any obligation attributable to the employer of the employee's pension benefit plan that would have been paid to the plan on behalf of that employee but for his or her absence during a period of uniformed service.

4. Upon reemployment, a person has three times the period of military service, but not to exceed five years after reemployment, within which to contribute the amount he or she would have contributed to the pension benefit plan if he or she had not been absent for uniformed service. He or she is entitled to accrued benefits of the pension plan that are contingent on the making of, or are derived from, employee contributions or elective deferrals only to the extent the person makes payment to the plan.

#### **P. Federal Employees' Retirement System (FERS)**

1. Federal employees enrolled in FERS who are reemployed with the Government are allowed to make up contributions to the Thrift Savings Fund over a period specified by the employee. However, the makeup period may not be shorter than two times nor longer than four times the period of absence for uniformed service.

2. Employees covered by the FERS are entitled to have contributions made to the Thrift Savings Fund on their behalf by the employing agency for their period of absence in an amount equal to one percent of the employee's basic pay. If an employee covered by FERS makes contributions, the employing agency must make matching contributions on the employee's behalf.

3. The employee shall be credited with a period of civilian service equal to the period of uniformed service, and the employee may elect, for certain purposes, to have his or her separation treated as if it had never occurred.

4. This benefit applies to any employee whose release from uniformed service, discharge from hospitalization, or other similar event make him or her eligible to seek reemployment under 38 U.S.C. Chapter 43 on or after August 2, 1990.

5. Additional information about Thrift Saving Plan (TSP) benefits is available in TSP Bulletins 95-13 and 95-20. A fact sheet is included in TSP Bulletin 95-20 which describes benefits and procedures for eligible employees. Eligible employees should contact their personnel office for information and assistance.

#### **Q. Civil Service Retirement System (CSRS)**

1. Employees covered by CSRS may make up contributions to the TSP, as in section P.1. of this appendix. However, no employer contributions are made to the TSP account of CSRS employees.

2. This benefit applies to any employee whose release from uniformed service, discharge from hospitalization, or other similar event makes him or her eligible to

seek reemployment under 38 U.S.C. Chapter 43 on or after August 2, 1990.

3. Additional information about TSP benefits is available in TSP Bulletins 95-13 and 95-20. A fact sheet is included in TSP Bulletin 95-20 which describes benefits and procedures for eligible employees. Eligible employees should contact their personnel office for information and assistance.

#### **R. Information and Assistance**

Information and informal assistance concerning civilian employment and reemployment is available through the National Committee for Employer Support of the Guard and Reserve (NCESGR). NCESGR representatives can be contacted by calling 1-800-336-4590.

#### **S. Assistance in Asserting Claims**

1. A person may file a complaint with the Secretary of Labor if an employer, including any Federal Executive Agency or OPM, has failed or refused, or is about to fail or refuse, to comply with employment or reemployment rights and benefits. The complaint must be in writing, and include the name and address of the employer, and a summary of the allegation(s).

2. The Secretary of Labor shall investigate each complaint and, if it is determined that the allegation(s) occurred, make reasonable efforts to ensure compliance. If these efforts are unsuccessful, the Secretary of Labor shall notify the complainant of the results and advise the complainant of his or her entitlement to pursue enforcement.

3. The Secretary of Labor shall, upon request, provide technical assistance to a claimant and, when appropriate, to the claimant's employer.

#### **T. Enforcement**

1. State or Private Employers.

a. A person may request that the Secretary of Labor refer a complaint to the Department of Justice. If the Department of Justice is reasonably satisfied that the person is entitled to the rights or benefits sought, the Department of Justice may appear on behalf of, and act as attorney for, the complainant, and commence an action for appropriate relief, or the individual may commence an action on his or her own behalf in the appropriate Federal district court.

b. The district court hearing the complaint can require the employer to:

- (1) Comply with the law;
- (2) Compensate the person for any loss of wages or benefits suffered; and
- (3) If the court determines that the employer willfully failed to comply with the law, pay the person an amount equal to the amount of lost wages or benefits as liquidated damages.

c. A person may file a private suit against an employer without the Secretary of Labor's assistance if he or she:

- (1) Has chosen not to seek the Secretary's assistance;
- (2) Has chosen not to request that the Secretary refer the complaint to the Department of Justice; or
- (3) Has refused the Department of Justice's representation of his or her complaint.

d. No fees or court costs shall be charged or taxed against any person filing a claim.

The court may award the person who prevails reasonable attorney fees, expert witness fees, and other litigation expenses.

2. Federal Government as the Employer.

a. The same general enforcement procedures established for private employers are applied to Federal Executive Agencies as an employer; however, if unable to resolve the complaint, the Secretary of Labor shall refer the complaint to the Office of Special Counsel, which shall represent the individual in a hearing before the Merit Systems Protection Board if reasonably satisfied that the individual is entitled to the rights and benefits sought. The claimant also has the option of directly filing a complaint with the Merit Systems Protection Board on his or her own behalf.

b. A person who is adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision.

3. Federal Intelligence Agency as the Employer. An individual employed by a Federal Intelligence Agency listed in subparagraph I.1. of this appendix, may submit a claim to the inspector general of the agency.

**Appendix B to Part 104—Sample Employer Notification of Uniformed Service**

This is to inform you that (insert applicant or Service member's name) must report for military training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to report for military duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your orders, and include the applicable period you have to return or submit notification of your return to work) while performing military training or duty unless extended by competent military authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

Dated: January 16, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98-1583 Filed 1-22-98; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 270**

**RIN 0790-AG43**

**Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam**

**AGENCY:** Office of Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This part implements section 657 of the National Defense Authorization Act for Fiscal Year 1997, which authorizes the Secretary of Defense to make payments to persons captured and incarcerated by the Democratic Republic of Vietnam. This part establishes policy and procedures concerning the payments to these persons.

**EFFECTIVE DATE:** This rule is effective May 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Alan Ridenour (703) 604-0821 or David Pronchick (703) 693-1066, Directorate of Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C., 20301-4000.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party. The specific exemption from the Paperwork Reduction Act is found in 5 CFR part 1320. The information collection in this final rule is exempt from OMB approval under Sec. 1320.4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act".

**Public Law 104-4, "Unfunded Mandates Report Act of 1995 (UMRA)"**

It has been determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

**List of Subjects in 32 CFR Part 270**

Military personnel, Payments, Prisoners of war, Vietnam.

Accordingly, 32 CFR part 270 is revised to read as follows:

**PART 270—COMPENSATION OF CERTAIN FORMER OPERATIVES INCARCERATED BY THE DEMOCRATIC REPUBLIC OF VIETNAM**

**Subpart A—General**

Sec.

270.1 Purpose.

270.2 Definitions.

270.3 Effective date.

**Subpart B—Commission**

270.4 Membership.

270.5 Staff.

**Subpart C—Standards and Verification of Eligibility**

270.6 Standards of eligibility.

270.7 Verification of eligibility.

**Subpart D—Payment**

270.8 Authorization of payment.

270.9 Amount of payment.

270.10 Time limitations.

270.11 Limitation on disbursements.

270.12 Payment in full satisfaction of all claims against the United States.

270.13 No right to judicial review or legal cause of action.

270.14 Limitation on attorneys fees.

270.15 Waiver of notary requirement.

**Subpart E—Appeal Procedures**

270.16 Notice of the Commission's determinations.

270.17 Procedures for filing petitions for reconsideration.

270.18 Action on reconsideration.

**Subpart F—Reports to Congress**

270.19 Reports to Congress.

**Appendix A to Part 270—Application for Compensation of Vietnamese Commandos**

**Authority:** Sec. 657, Pub. L. 104-201, 110 Stat. 2422.

**Subpart A—General**

**§ 270.1 Purpose.**

The purpose of this part is to implement section 657 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201), which authorizes the Secretary of Defense to make payments to persons who demonstrate to the satisfaction of the Secretary of Defense that the persons were captured and incarcerated by the Democratic Republic of Vietnam as a result of the participation by the persons in certain operations conducted by the Republic of Vietnam.

**§ 270.2 Definitions.**

(a) *Applicant.* A person applying for payments under this part.

(b) *Child of an eligible person.* A recognized natural child, an adopted child, or a stepchild who lived with the eligible person in a regular parent-child relationship.

(c) *The Commission.* The Commission authorized to oversee payments to certain persons captured and incarcerated by the Democratic Republic of Vietnam, established under this part.

(d) *Eligible person.* A person determined by the Commission as eligible for payment under subpart C of this part.

(e) *OPLAN 34A.* The operation carried out under the auspices of the government of South Vietnam and the U.S. Military Assistance Command Vietnam, Studies and Observations Group (MACV/SOG), starting in 1964, which inserted commandos into North Vietnam for the purpose of conducting intelligence and other military activities. OPLAN 34A also refers to predecessor operations which were precursors to OPLAN 34A operations. OP 35 refers to the small military units which were sent to conduct sabotage, reconnaissance, exploitation and other intelligence missions on or around the borders of Vietnam and Laos.

(f) *North Vietnam.* The Democratic Republic of Vietnam.

(g) *OSD.* The Office of the Secretary of Defense.

(h) *The Secretary.* The Assistant Secretary of Defense (Force Management Policy).

(i) *South Vietnam.* The Republic of Vietnam.

(j) *Spouse of an eligible person.* Someone who was married to that eligible person for at least 1 year immediately before the death of the eligible person.

(k) *Required declaration.* The statements to be signed and notarized in Appendix A to this part. All applicants must sign Part C and either Part A or Part B of Appendix A to this part.

#### **§ 270.3 Effective date.**

This part is effective on May 15, 1997.

### **Subpart B—Commission**

#### **§ 270.4 Membership.**

The Secretary shall establish within OSD a Commission that is composed of the following voting members: one representative from the Office of the Under Secretary of Defense for Personnel and Readiness, who shall be the chairman of the Commission, one representative from the Office of the Under Secretary of Defense for Policy, and one representative from each of the military departments. Members of the Commission may be either military or

civilian and all members must possess, at a minimum, a Secret clearance.

#### **§ 270.5 Staff.**

(a) The Commission will have a support staff, which will include staff members sufficient to expeditiously and efficiently process the applications for payments under this part. All members of the staff will possess, as a minimum, a Top Secret clearance because of the sensitive nature of the information that may require review in determining eligibility of claimants.

(b) The Secretary will ensure that the Commission has all administrative support, including space, office and automated equipment and translation services, needed for the efficient and expeditious review and payment of claims. The Secretary may task appropriate Department of Defense elements to provide such support, either through assignment of personnel or the hiring of independent contractors.

### **Subpart C—Standards and Verification of Eligibility**

#### **§ 270.6 Standards of eligibility.**

(a) A person is eligible for payments under this part if such person:

(1) Was captured and incarcerated by North Vietnam as a result of his participation in operations conducted under OPLAN 34A or its predecessor operation; or

(2) Served as a Vietnamese operative under OP 35, and was captured and incarcerated by North Vietnamese forces as a result of the participation by the person in operations in Laos or along the Lao-Vietnamese border pursuant to OP 35, and

(i) Was captured and incarcerated by the North Vietnamese, and remained in captivity after 1973 (or died in captivity) after participation in OP 35, and

(ii) Has not previously received payment for the United States Government after 1972 from the period spent in captivity.

(b) In the case of a decedent who would have been eligible for a payment under this part if alive, payment will be made to the survivors of the decedent in the following order:

(1) To the surviving spouse of an eligible person; or

(2) If there is no surviving spouse of an eligible person, to the surviving children of an eligible person, in equal shares.

(c) A payment may not be made under this part to, or with respect to, a person who the Commission determines, based on the available evidence, served in the People's Army of North Vietnam or provided active assistance to the

Government of North Vietnam or forces opposed to the Government of South Vietnam or the United States during any period from 1958 through 1975.

(d) The Commission will make reasonable efforts to publicize the availability of payments involved in this procedure, using existing public affairs channels.

#### **§ 270.7 Verification of eligibility.**

(a) All persons applying for payment under this part shall first submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos as set out in Appendix A to this part, along with all corroborating documents and information required, to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301–4000. Submission of an Application for Compensation of Vietnamese Commandos without properly signed and notarized declarations will automatically render the application ineligible for consideration by the Commission for payment. All applicants must sign and have notarized the declarations in Part C of the Application for Compensation of Vietnamese Commandos. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the Application for Compensation of Vietnamese Commandos. If portions of the Application for Compensation of Vietnamese Commandos are not completed, the Commission may draw adverse inferences from the portions left incomplete.

(b) Staff Functions in the Verification of Eligibility Process. The Staff Director shall:

(1) Establish a database for logging and tracking Applications for Compensation of Vietnamese Commandos throughout the claims process, including appellate actions and final payment or denial of claims.

(2) Maintain a liaison with on-site personnel at the National Archives Center, College Park, Maryland, to organize and translate finance records for review.

(3) Upon receipt of each Application for Compensation of Vietnamese Commandos, research cases to verify eligibility of claimant to include reviewing and analyzing existing records.

(4) Forward applications (including support documentation) to other U.S. Government agencies as required (e.g., CIA, INS) for review of their records, as needed to acquire documentation that may aid in determining the eligibility of claimants to receive payments.

(5) Present any information or comments resulting from the research and review of cases, plus any reasonably available and probative information, to the Commission with a recommendation on the eligibility of applicants.

(6) If eligibility is favorably approved by the Commission, forward written requests to DFAS to effectuate payments.

(7) Prepare notification letters, on behalf of the Commission, for forwarding to claimants notifying them of the final determination concerning approval or disapproval of their applications.

(8) In coordination with the Army Budget Office and OSD, determine appropriate fund cite that will be used for payments.

(9) Assist in the preparation of required Reports to Congress.

(10) Determine administrative budgetary support requirements and submit funding request to OSD.

(11) Provide clerical and administrative support to the Commission.

(12) Create and maintain a system of records to manage all information generated by the processing of Applications for Compensation of Vietnamese Commandos under this part and to create an administrative record of actions by the Commission. All information received or originated from other Departments and agencies of the U.S. government will be retained, stored, and further disseminated only in accordance with pertinent law (e.g., 5 U.S.C. section 552(FOIA) and 5 U.S.C. section 552a (Privacy Act)) and conditions set by those originating Departments and agencies.

(c) Claims will be processed expeditiously. Within 18 months of actual receipt by the Commission of an Application for Compensation of Vietnamese Commandos, the Commission will determine the eligibility of the applicant. The standard for finding eligibility is whether the information reasonably available to the Commission indicates that the applicant is more likely than not to be eligible for a payment under this part. The burden of making a showing of eligibility shall be on the applicant. Upon determination of eligibility, the payment should be promptly accomplished.

(d) Applicants may request to appear in person before the Commission, which will retain discretion whether to grant such requests. The Commission may request the personal appearance or interview of any applicant as a condition of further consideration of his or her application if such appearance would significantly aid the Commission

in its determination. All appearances shall be at the expense of the applicant.

## **Subpart D—Payment**

### **§ 270.8 Authorization of payment.**

Subject to the availability of appropriated funds, upon determination by the Commission of the eligibility of a person for payment, the Commission will authorize the Defense Finance and Accounting Service (DFAS) to make payments out of the funds appropriated for this purpose. Any payment authorized to a person under a legal disability, may, in the discretion of the Commission, be paid for the use of the person, to the natural or legal guardian, committee, conservator, or curator, or, if there is no such natural or legal guardian, committee, conservator, or curator, to any other person, including the spouse or children of such person, who the Commission determines is charged with the care of the person. The Commission will notify eligible persons of the process for disbursements.

### **§ 270.9 Amount of payment.**

The amount payable to, or with respect to, an eligible person under this part is \$40,000. If an eligible person can demonstrate to the satisfaction of the Commission that confinement or incarceration exceeded 20 years, the Commission may authorize payment of an additional \$2,000 for each full year in excess of 20 (and a proportionate amount for a partial year), but the total amount paid to, or with respect to, an eligible person under this part may not exceed \$50,000.

### **§ 270.10 Time limitations.**

To be eligible for payments under this part, applicants must file Applications for Compensation of Vietnamese Commandos with the Commission within 18 months of the effective date of these regulations, May 15, 1997.

### **§ 270.11 Limitation on disbursements.**

The Commission may, in its discretion, direct that the actual disbursement of a payment under this part be made only to the person who is authorized to receive the payment, and only upon the appearance of that person, in person, at any designated Defense Finance Accounting Service disbursement office in the United States. Upon approval of the Commission, payment may be made at such other location or in such other manner as the person authorized to receive payment may request in writing. In the case of an application authorized for payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the

person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

### **§ 270.12 Payment in full satisfaction of all claims against the United States.**

The acceptance of payment by, or with respect to, an eligible person under this part shall constitute full satisfaction of all claims by or on behalf of that person against the United States arising from the person's participation in operations under OPLAN 34A or OP35.

### **§ 270.13 No right to judicial review or legal cause of action.**

Subject to subpart E of this part, all determinations by the Commission pursuant to this part are final and conclusive, notwithstanding any other regulation. Applicants under this part have no right to judicial review, and such review is specifically precluded. This part does not create or acknowledge any legal right or obligation whatsoever.

### **§ 270.14 Limitation on attorneys fees.**

Notwithstanding any contract or agreement, the representative of a person authorized to receive payment under this part may not receive, for services rendered in connection with the claim of, or with respect to, a person under this part, more than 10 percent of a payment made under this part on such claim.

### **§ 270.15 Waiver of notary requirement.**

In exceptional circumstances (e.g., overseas claimant) the requirement for notarizations may be waived at the discretion of the Commission.

## **Subpart E—Appeal Procedures**

### **§ 270.16 Notice of the Commission's determinations.**

Applicants whose claims for payment are denied in whole or in part by the Commission will be notified in writing of the determination. Applicants may petition the Assistant Secretary of Defense, Force Management Policy (or his designee) for a reconsideration of the Commission's determinations, and may submit any documentation in support of such petitions.

### **§ 270.17 Procedures for filing petitions for reconsideration.**

A request for reconsideration must be made to the Secretary, care of the Staff Director of the Commission at the address of the Commission set out in § 270.7, within 45 days of receipt of the notice from the Commission of ineligibility. The Commission may

waive that time limit for good cause shown.

#### § 270.18 Action on reconsideration.

(a) The Assistant Secretary of Defense, Force Management Policy (or his designee) will:

(1) Review the Commission's administrative record of the original determination.

(2) Review additional information or documentation submitted by the applicant to support his or her petition for reconsideration.

(3) Determine whether the decision of the Commission should be affirmed, modified, or reversed.

(b) When there is a decision affirming the Commission's determinations, the Staff Director will notify the applicant in writing and include a statement of the reason for the affirmance.

(c) A decision of affirmance shall constitute the final action of the Department of Defense. The Secretary (or his designee) may decline to consider any subsequent petitions for reconsideration.

(d) When there is a decision modifying or reversing the Commission's determination, the notification should be immediately made to the Staff Director so as to implement the final action.

#### Subpart F—Reports to Congress

##### § 270.19 Reports to Congress.

Not later than September 23, 1998, the Commission will prepare and the Secretary will submit to Congress a report on the payment of claims under this part. Subsequent to that initial report, the Commission will prepare and the Secretary will submit to Congress annual reports on the status of payment of claims.

#### Appendix A to Part 270—Application for Compensation of Vietnamese Commandos

All persons applying for payment shall submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos, along with corroborating documents and information, to: Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301-4000.

All applicants must sign and have notarized the declaration in Part C of the application. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the application (as applicable).

Applicants must file applications within 18 months of the effective date of this part (15 May 1997): that is, *not later than 15 November 1998*.

Privacy Act Statement:

**Authority:** National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, Section 657.

**Principal Purpose:** To evaluate applications for cash payments for those individuals, or their surviving spouse or children, who were captured and incarcerated by North Vietnam as a result of participating in specified joint United States-South Vietnamese operations.

**Routine Uses:** To the Immigration and Naturalization Service and the Central Intelligence Agency for purposes of verifying information relating to the claimant's eligibility for payment. To the Department of Justice for purposes of representing the Department of Defense in *Au Dong Quy, et al./Lost Commandos v. The United States*.

**Disclosure:** Voluntary. However, if portions are not completed the Commission may draw adverse inferences from the incomplete portions.

**Social Security Number:** Providing a social security number is voluntary. If one is not provided, the application for payment will still be processed.

This application shall be executed by the person applying for eligibility, or his surviving spouse or children, or designated representatives of such persons.

**Part A—Complete the following information on the person whose status as a former operative is the basis for applying for payment:**

(1) Current legal name or legal name at death:

(a) Aliases: \_\_\_\_\_

(b) Former, or other legal names used: \_\_\_\_\_

(2) Current address or last address prior to death: \_\_\_\_\_

(3) Mailing address for compensation check in the event compensation is approved (may be different from commando's current/last address): \_\_\_\_\_

(4) Telephone Number(s): \_\_\_\_\_

(5) Identification Numbers:

(a) U.S. Social Security Number (optional): \_\_\_\_\_

(b) U.S. Immigration & Naturalization Service (INS) Number: \_\_\_\_\_

(c) Vietnamese Identification Card Number: \_\_\_\_\_

(6) Date of Birth: \_\_\_\_\_

(7) Place of Birth: \_\_\_\_\_

(8) Distinguishing marks (e.g., scars): \_\_\_\_\_

(9) Family Identification:

(a) Parents:

Father: \_\_\_\_\_

Mother: \_\_\_\_\_

(b) Spouse: \_\_\_\_\_

(c) Children: \_\_\_\_\_

(d) Brothers: \_\_\_\_\_

(e) Sisters: \_\_\_\_\_

(f) Others: \_\_\_\_\_

(10) Team name: \_\_\_\_\_

(11) Team role/duties (e.g., team leader, radioman): \_\_\_\_\_

(12) Place of insertion: \_\_\_\_\_

(13) Method of insertion (e.g., parachute, boat): \_\_\_\_\_

(14) Date of insertion: \_\_\_\_\_

(15) Date and place of capture: \_\_\_\_\_

(16) Detailed Record of confinement:

First Prison Name: \_\_\_\_\_

Date Arrived: \_\_\_\_\_

Next Prison Name: \_\_\_\_\_

Date Transferred: \_\_\_\_\_

Next Prison Name: \_\_\_\_\_

Date Transferred: \_\_\_\_\_

Next Prison Name: \_\_\_\_\_

Date Transferred: \_\_\_\_\_

Next Prison Name: \_\_\_\_\_

Date Transferred: \_\_\_\_\_

Next Prison Name: \_\_\_\_\_

Date Transferred: \_\_\_\_\_

Next Prison Name: \_\_\_\_\_

Date Transferred: \_\_\_\_\_

Date of Final Release from Confinement: \_\_\_\_\_

Name of Prison/Camp/Location of Final Release: \_\_\_\_\_

(17) Name, address, and telephone number of counsel or attorney (if any): \_\_\_\_\_

(18) Required Declaration only for commandos filing on their own behalf (complete the applicable declaration, 34A or 35—not both):

#### For OPLAN 34A or Predecessor Operations (Missions Into North Vietnam)

I served pursuant to OPLAN 34A or its predecessor operation and was captured and imprisoned by North Vietnam as a result of those activities. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to and subscribed before me on \_\_\_\_\_

(Date)

Notary Public: \_\_\_\_\_

Date: \_\_\_\_\_

My commission expires on \_\_\_\_\_

(Date)

**For OP 35 Operations (Missions Into Laos or Along the Viet-Lao Border)**

I served as a Vietnamese operative pursuant to OP 35, and was captured and imprisoned by North Vietnam as a result of my participation in operations in Laos or along the Lao-Vietnamese border under the direction of OP 35. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I have not previously received payment from the United States Government as compensation for the period of captivity. I remained in captivity after 1973. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to and subscribed before me on \_\_\_\_\_

(Date) \_\_\_\_\_

Notary Public: \_\_\_\_\_

Date: \_\_\_\_\_

My commission expires on \_\_\_\_\_

(Date) \_\_\_\_\_

Part B—In addition to PART A, above, any applicant who is a surviving spouse or child of a deceased commando must complete Part B, below, with information on themselves.

(1) Current Legal name: \_\_\_\_\_

(a) Aliases: \_\_\_\_\_

(b) Former, or other names used: \_\_\_\_\_

(2) Current Address: \_\_\_\_\_

(3) Telephone Number(s): \_\_\_\_\_

(4) Identification Numbers: \_\_\_\_\_

(a) U.S. Social Security Number (optional): \_\_\_\_\_

(b) U.S. Immigration and Naturalization Service (INS) Number: \_\_\_\_\_

(c) Vietnamese Identification Card Number: \_\_\_\_\_

(5) Date of birth: \_\_\_\_\_

(6) Place of birth: \_\_\_\_\_

(7) Relationship to deceased person: \_\_\_\_\_

(8) Date and place of marriage (if surviving spouse): \_\_\_\_\_

(9) If you are a surviving child and there is no surviving spouse, list the names and addresses of all other children of the deceased person, including all recognized natural children, step-children who lived with the deceased person, and adopted children. Provide the date of death for any who are deceased.

(10) Name, address, and telephone number of counsel/attorney (if any): \_\_\_\_\_

(11) Required Declaration (Note: If Commando is deceased, applicant must sign one of the two following declarations here and Part C, below):

**For Surviving Spouse or Child of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)**

To the best of my information, knowledge, and belief, my deceased family member served pursuant to OPLAN 34A or its predecessor operation and was captured and imprisoned by North Vietnam as a result of those activities. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to and subscribed before me on \_\_\_\_\_

(Date) \_\_\_\_\_

Notary Public: \_\_\_\_\_

Date: \_\_\_\_\_

My commission expires on \_\_\_\_\_

(Date) \_\_\_\_\_

**For Surviving Spouse or Child of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)**

To the best of my information, knowledge, and belief, my deceased family member served as a Vietnamese operative pursuant to OP 35, and was captured and imprisoned by North Vietnam as a result of his participation in operations in Laos or along the Lao-Vietnamese border under the direction of OP 35. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. He did not previously receive payment from the United States Government as compensation for the period of captivity. He remained in captivity after 1973. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to and subscribed before me on \_\_\_\_\_

(Date) \_\_\_\_\_

Notary Public: \_\_\_\_\_

Date: \_\_\_\_\_

My commission expires on \_\_\_\_\_

(Date) \_\_\_\_\_

Part C—Required Documents:  
All documents submitted in support of an application for payment should be originals when possible, or copies of the originals certified by the official custodian of the documents. If certified copies cannot be obtained, uncertified copies should be submitted. If uncertified copies cannot be obtained, submit sworn affidavits from two or more persons who have personal knowledge of the information sought.

**For the Commando/Operative (Person Described in Part A, Above)**

(1) Identification. A document with his current legal name and address (or legal name and address at death if deceased).

(2) Two or more sworn affidavits from individuals having personal knowledge of the person's identity (these should be submitted in addition to the document with current name and address).

(3) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g., passport).

(4) One document of name change, if the person's current legal name is not the same as when he was sent on the OPLAN 34A or OP 35 missions.

(5) One document of evidence of guardianship. This is only required if you are executing this document as the guardian of the person identified in PART A. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the person and the extent to which you are responsible for the care of the person, or your position as an officer of the institution in which the person is institutionalized.

(6) One document of evidence of imprisonment. This should be a document issued by the government of North Vietnam showing the dates of the person's imprisonment.

(7) Any documents of evidence of participation in covered operations. These documents should be contracts, orders, or other operational documentation corroborating participation in clandestine operations under OPLAN 34A (or its predecessor) or OP 35.

**For a Spouse or Surviving Child of a Deceased Person Described in Part A, Above**

In addition to documents (1) through (7) above concerning the deceased person described in PART A, submit the following:

(8) One of the following documents as evidence of the Commando's death:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of the commando/operative's death, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(g) If you are submitting an application as a surviving spouse, submit another document of the same type as evidence of the Commando's spouse's death.

#### **For the Spouse of a Deceased Person Described in Part A Above**

In addition to documents described in PART C items (1) through (8), above, each surviving spouse should submit the following:

(9) One of the following documents as evidence of your marriage to the deceased person:

(a) A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient information to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(b) An official report from a public agency as to a marriage which occurred while the deceased person was employed by such agency;

(c) An affidavit of the clergyman or magistrate who officiated;

(d) The certified copy of a certificate of marriage attested to by the custodian of the records;

(e) The affidavits of two or more eyewitnesses to the ceremony; or

(f) In jurisdictions where "common law" marriages are recognized, an affidavit by the surviving spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

(g) If you cannot obtain any of the above evidence of your marriage, you must submit any other evidence that would reasonably support a belief that a valid marriage actually existed.

(10) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g. passport).

(c) One document of name change. If your current legal name is the same as that during the marriage, this section does not apply. Spouses whose current legal name is different than that used when married should submit a document or affidavits to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the spouse, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the spouse and the extent to which you are responsible for the care of the spouse or your position as an officer of the institution in which the spouse is institutionalized.

#### **For the Surviving Children**

In addition to documents described in PART C items (1) through (8), above, each surviving child should submit the following:

(11) One document as evidence of your relationship to your parent (the deceased person described in PART A, above), as follows:

If A Natural Child:

(a) Birth certificate showing that the deceased person was your parent.

(b) If the birth certificate does not show the deceased person as your parent, a certified copy of:

(i) An acknowledgment in writing signed by the deceased person;

(ii) A judicial decree ordering the deceased person to contribute to your support;

(iii) The public record of birth or a religious record showing that the deceased person was named as your parent;

(iv) Affidavit of a person who knows that the deceased person accepted you as his child; or

(v) Public records, such as records of school or welfare agencies, which show that with the deceased person's knowledge, the deceased individual was named as your parent.

If An Adopted Child:

An adopted child must submit a certified copy of the decree of adoption.

If A Step-Child:

Submit all three of the following documents as evidence of the step-child relationship:

(a) One document as evidence of birth to the spouse of the deceased person, or other evidence that reasonably supports the existence of a parent-child relationship between you and the spouse of the deceased person;

(b) One document as evidence that you were either living with or in a parent-child

relationship with the deceased person at the time of his death; and

(c) One document as evidence of the marriage of the deceased person and the spouse, such as a certified copy of the record of marriage, or an abstract of the public records containing sufficient information to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

(12) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving child of a deceased person, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the child and the extent to which you are responsible for the care of the child, or your position as an officer of the institution in which the child is institutionalized.

Read the following statement carefully before signing this document. A false statement may be grounds for punishment by fine or imprisonment or both. This sworn declaration must accompany all documents submitted to the Commission, whether with or separate from the application.

#### **For All Applicants**

I declare under penalty of perjury under the laws of the United States of America that the foregoing documents provided in Part C are true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to and subscribed before me on \_\_\_\_\_

(Date) \_\_\_\_\_

Notary Public: \_\_\_\_\_

Date: \_\_\_\_\_

My commission expires on \_\_\_\_\_

(Date) \_\_\_\_\_

Dated: January 16, 1998.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98-1534 Filed 1-22-98; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 971015246-7293-02; I.D. 010798C]

## Fisheries of the Northeastern United States; Summer Flounder and Scup Fisheries; Adjustments to the 1998 Quotas; Commercial Summer Period Scup Quota Harvested for Massachusetts

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota adjustment, notice of commercial quota harvest.

**SUMMARY:** NMFS issues this notification announcing preliminary adjustments to the 1998 summer flounder commercial state quotas and the 1998 scup Summer period state quotas. This action complies with regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which require that landings in excess of a state's annual summer flounder commercial quota and Summer period scup commercial quota be deducted from a state's respective quota the following year. The public is advised

that preliminary quota adjustments have been made and is informed of the revised quotas for the affected states.

**DATES:** January 16, 1998, through December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

## SUPPLEMENTARY INFORMATION:

## Summer Flounder

Regulations implementing summer flounder management measures are found at 50 CFR part 648, subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. The final specifications for the 1998 summer flounder fishery, adopted to ensure achievement of a fishing mortality rate (F) of 0.24 for 1998, set a commercial quota equal to 11,105,636 lb (5.0 million kg) (62 FR 66304, December 18, 1997).

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. NMFS published final specifications and noted that associated adjustments to states' 1998

quotas as a result of 1997 overages would be made. These data are presented as preliminary because some states remained open to 1997 summer flounder landings when these data were assembled by NMFS for the purposes of this notice. Since it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies in a state that is currently closed to landings, an additional adjustment will be necessary.

The final quota figures reflect the approval of a commercial summer flounder quota transfer of 24,118 lb (10,940 kg) from New Jersey to Connecticut. The notification of approval of that transfer was filed with the **Federal Register** prior to the end of the 1997 quota year and was published on January 6, 1998 (63 FR 444).

Based on dealer reports and other available information, NMFS has determined that the States of Maine, Massachusetts, New York, Delaware, Maryland, and North Carolina exceeded their 1997 quotas. The remaining States of Rhode Island, Connecticut, New Jersey, and Virginia did not exceed their 1997 quotas. The final preliminary 1997 landings and resulting overages for all states are given in Table 1. The resulting adjusted 1998 commercial quota for each state is given in Table 2.

TABLE 1.—PRELIMINARY 1997 SUMMER FLOUNDER COMMERCIAL LANDINGS, AND RESULTING OVERAGES BY STATE, FOR LANDINGS REPORTED THROUGH DECEMBER 27, 1997

State	1997 Quota		Preliminary 1997 landings		1997 state overages	
	Lb	(Kg) <sup>1</sup>	Lb	(Kg)	Lb	(Kg)
ME .....	2,342	1,062	2,835	1,286	493	224
NH .....	51	23	.....	.....	.....	.....
MA .....	709,229	321,701	745,105	337,974	35,876	16,273
RI .....	1,596,443	724,134	1,584,641	718,781	.....	.....
CT .....	246,924	112,003	246,924	112,003	.....	.....
NY .....	754,343	342,164	814,027	369,236	59,684	27,072
NJ .....	1,323,474	600,318	1,316,837	597,307	.....	.....
DE .....	2(5,662)	(2,568)	4,393	1,993	10,055	4,561
MD .....	188,254	85,391	203,961	92,515	15,707	7,125
VA .....	2,294,793	1,040,901	2,253,809	1,022,311	.....	.....
NC .....	1,273,605	577,698	1,455,212	660,073	181,607	82,376
Total <sup>3</sup> .....	8,383,796	3,802,826	8,627,744	3,913,479	303,422	137,630

<sup>1</sup> Kilograms, converted from pounds, may not necessarily add due to rounding.

<sup>2</sup> Parentheses indicate a negative number.

<sup>3</sup> The total 1997 state overages reflect the sum of the individual state overages, and not the overage of the entire year's quota.

TABLE 2.—PRELIMINARY ADJUSTED FINAL 1998 SUMMER FLOUNDER QUOTAS

State	Final 1998 quota <sup>1</sup>		Preliminary adjusted 1998 quota	
	Lb	(Kg) <sup>2</sup>	Lb	(Kg) <sup>2</sup>
ME .....	5,284	2,397	4,791	2,173
NH .....	51	23	51	23

TABLE 2.—PRELIMINARY ADJUSTED FINAL 1998 SUMMER FLOUNDER QUOTAS—Continued

State	Final 1998 quota <sup>1</sup>		Preliminary adjusted 1998 quota	
	Lb	(Kg) <sup>2</sup>	Lb	(Kg) <sup>2</sup>
MA .....	757,841	343,751	721,965	327,478
RI .....	1,742,583	790,422	1,742,583	790,422
CT .....	250,791	113,757	250,791	113,757
NY .....	849,680	385,408	789,996	358,336
NJ .....	1,858,363	842,939	1,858,363	842,939
DE .....	<sup>3</sup> (3,685)	(1,671)	(13,740)	(6,232)
MD .....	226,570	102,770	210,863	95,646
VA .....	2,368,569	1,074,365	2,368,569	1,074,365
NC .....	3,049,589	1,383,270	2,867,982	1,300,895
Total .....	11,105,636	5,037,432	10,802,214	4,899,802

<sup>1</sup> As published on December 18, 1997 (62 FR 66304).<sup>2</sup> Kilograms, converted from pounds, may not necessarily add due to rounding.<sup>3</sup> Parentheses indicate a negative number.**Scup**

Regulations implementing scup management measures are found at 50 CFR part 648, subparts A and H. The regulations require annual specification of a commercial quota that is allocated into three periods: Winter I, Summer, and Winter II. During Winter I and Winter II periods, the commercial quota is distributed to the coastal states from Maine through North Carolina on a coastwide basis. During the Summer period, the commercial quota is apportioned among the Atlantic coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state during the Summer period is described in § 648.120. The final specifications for the 1998 scup fishery, adopted to ensure

achievement in 1998 of a target exploitation rate of 47 percent, the rate associate with  $F=0.72$ , set a commercial quota equal to 4,572,000 lb (2.07 million kg) and a Summer period allocation equal to 1,780,794 lb (0.81 million kg) (62 FR 66304, December 18, 1997).

Section 648.120(d)(4) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Section 648.120(d)(6) provides that any overages of the commercial quota landed in any state during the Summer period will be deducted from that state's Summer period quota for the following year. NMFS published final specifications and noted that associated adjustments to states' 1998 Summer period quotas as a result of 1997 overages would be made. If additional data are received from any

state that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies, an additional adjustment will be necessary.

Based on dealer reports and on other available information, NMFS has determined that the Commonwealth of Massachusetts and the State of North Carolina have exceeded their 1997 Summer period quotas for scup. The remaining States of Maine, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia did not exceed their 1997 Summer period quotas. The final preliminary 1997 landings and resulting state overages are given in Table 3. The resulting adjusted 1998 commercial Summer period quota for each state is given in Table 4.

TABLE 3.—PRELIMINARY 1997 SUMMER PERIOD COMMERCIAL LANDINGS AND RESULTING OVERAGES BY STATE FOR SCUP

State	1997 summer period quota		Preliminary 1997 summer landings		1997 summer overage	
	Lb	(Kg) <sup>1</sup>	Lb	(Kg)	Lb	(Kg)
ME .....	3,048	1,383	.....	.....	.....	.....
NH .....	.....	.....	.....	.....	.....	.....
MA .....	362,029	164,214	1,428,183	647,813	1,066,154	483,599
RI .....	1,415,425	642,026	398,880	180,929	.....	.....
CT .....	79,431	36,029	40,858	18,533	.....	.....
NY .....	398,527	180,769	221,320	100,389	.....	.....
NJ .....	73,453	33,318	2,056	933	.....	.....
DE .....	.....	.....	.....	.....	.....	.....
MD .....	301	137	162	73	.....	.....
VA .....	4,157	1,886	148	67	.....	.....
NC .....	628	285	888	403	260	118
Total <sup>2</sup> .....	2,336,999	1,060,045	2,092,495	949,140	1,066,414	483,717

<sup>1</sup> Kilograms, converted from pounds, may not necessarily add due to rounding.<sup>2</sup> The total 1997 state overages reflect the sum of the individual state overages, and not the overage of the entire period's quota.

TABLE 4.—PRELIMINARY ADJUSTED FINAL 1998 SUMMER PERIOD SCUP QUOTAS

State	Final 1998 summer quotas		Preliminary adjusted 1998 summer quotas	
	Lb	(Kg) <sup>1</sup>	Lb	(Kg)
ME .....	2,322	1,053	2,322	1,053
NH .....	1	.....	1	.....
MA .....	275,866	125,131	<sup>2</sup> (790,288)	(358,469)
RI .....	1,078,554	489,224	1,078,554	489,224
CT .....	60,526	27,454	60,526	27,454
NY .....	303,678	137,746	303,678	137,746
NJ .....	55,972	25,388	55,972	25,388
DE .....	.....	.....	.....	.....
MD .....	229	104	229	104
VA .....	3,167	1,437	3,167	1,437
NC .....	479	217	219	99
Total .....	1,780,794	807,755	714,380	324,037

<sup>1</sup> Kilograms, converted from pounds, may not necessarily add due to rounding.

<sup>2</sup> Parentheses indicate a negative number.

Section 648.121(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Summer period state commercial quotas and determine the date when a state's commercial quota is harvested. NMFS is required to publish notification in the **Federal Register** advising a state and notifying vessel and dealer permit holders that, effective upon a specific date, a state's Summer period commercial quota has been harvested and that no Summer period commercial quota is available for landing scup for the remainder of the period.

Since this adjustment reduces the 1998 Massachusetts Summer period commercial quota allocation from 275,866 lb (125,131 kg) to – 790,288 lb (– 358,469 kg), this notification also serves to announce that the Summer period quota available to Massachusetts has been harvested and that no

commercial quota is available for landings during the 1998 Summer period.

The regulations at § 648.4(b) provide that Federal scup commercial permit holders agree as a condition of the permit not to land scup in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours May 1, 1998, until 2400 hours October 31, 1998, landings of scup in Massachusetts by vessels holding Federal commercial scup fisheries permits are prohibited, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase scup from federally permitted scup vessels that land in Massachusetts for the Summer period, or until additional quota

becomes available through a transfer. If Massachusetts fails to obtain this quota transfer, it is probable that the scup fishery in the Commonwealth will remain closed for additional Summer periods beyond 1998. The fishery may remain closed until its allocated quota is sufficient to allow the fishery to reopen.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 15, 1998.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 98–1545 Filed 1–16–98; 3:41 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of Procurement and Property Management

#### 7 CFR Part 3200

RIN 0500-AA00

#### Uniform Procedures for the Acquisition and Transfer of Excess Personal Property

**AGENCY:** Office of Procurement and Property Management, USDA.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The proposed rulemaking sets forth uniform procedures for the acquisition and transfer of excess personal property to the 1890 Land Grant Institutions (including Tuskegee University), the 1994 Land Grant Institutions and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs as authorized by section 923 of the Federal Agriculture Improvement and Reform Act (FAIR) of 1996 (Pub. L. No. 104-127), 7 U.S.C. 2206a.

**DATES:** Comments are due by February 23, 1998.

**ADDRESSES:** Send your comments to Linda W. Oliphant, U.S. Department of Agriculture, Office of Procurement and Property Management (OPPM), Property Management Division, (PMD), Room 1520 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Denise R. Hayes or Linda W. Oliphant, U.S. Department of Agriculture, Office of Procurement and Property Management, Property Management Division, Room 1520 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720-3141.

**SUPPLEMENTARY INFORMATION:** Section 923 of the FAIR Act, 7 U.S.C. 2206a, authorizes the Secretary of Agriculture to convey title to excess personal property, with or without monetary compensation to the 1994 Institutions

(as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note); to any Hispanic-Serving Institution (as defined in section 316(b)) of the Higher Education Act of 1965, 20 U.S.C. 1059c(b); and to any college or university eligible to receive funds under the Act of August 30, 1890, 7 U.S.C. 321 *et seq.*, including Tuskegee University. Pursuant to the authority provided in section 923 USDA proposes to add part 3200 to title 7 of Code of Federal Regulations to establish uniform procedures for the acquisition and transfer of excess personal property to the designated institutions. This document includes not only the Department of Agriculture (USDA) procedures to implement 7 U.S.C. 2206a, but draws upon the General Services Administration (GSA) regulations concerning the disposal of excess personal property.

#### Paperwork Reduction

The information collection and recordkeeping requirements to implement these procedures have been cleared by the Office of Management and Budget (OMB), under 0505-0019, in accordance with the Paperwork Reduction Act, 44 U.S.C. 3500 *et seq.*

#### Classification

This proposed rule was reviewed under Executive Order 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of \$100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

#### Regulatory Flexibility

The Department of Agriculture certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### Executive Order 12988

The proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order 12988.

#### List of Subjects in 7 CFR Part 3200

Excess government property, Government property, Government property management.

For the reasons set forth in the preamble, the Department of Agriculture proposes to establish chapter XXXII in title 7 of the Code of Federal Regulations to read as follows:

#### CHAPTER 32—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT, DEPARTMENT OF AGRICULTURE

##### Part 3200 Department of Agriculture guidelines for the acquisition and transfer of excess personal property

3201—3299 [Reserved]

#### PART 3200—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE ACQUISITION AND TRANSFER OF EXCESS PERSONAL PROPERTY

##### Sec.

- 3200.1 Purpose.
- 3200.2 Eligibility.
- 3200.3 Definitions.
- 3200.4 Procedures.
- 3200.5 Dollar limitation.
- 3200.6 Restrictions.
- 3200.7 Title.
- 3200.8 Costs.
- 3200.9 Accountability and recordkeeping.
- 3200.10 Disposal.
- 3200.11 Liabilities and losses.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 2206a.

##### § 3200.1 Purpose.

This part sets forth the procedures to be utilized by USDA, Office of Procurement and Property Management (OPPM) in the acquisition and transfer of excess property to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs as authorized by 7 U.S.C. 2206a. Title to the personal property shall pass to the institution.

##### § 3200.2 Eligibility.

Institutions that are eligible to receive Federal excess personal property

pursuant to the provision of this part are the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions conducting research, educational, technical, and scientific activities or related programs.

### § 3200.3 Definitions.

(a) *1890 Land grant institutions*—any college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.), including Tuskegee University.

(b) *1994 Land grant institutions*—any of the tribal colleges or universities as defined in Section 532 of the Equity in Educational Land-Grant Status Act of 1994.

(c) *Hispanic-serving institutions*—institutions of higher education as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(d) *Property management officer*—is an authorized Department of Agriculture or institution official responsible for property management.

(e) *Screeners*—is an individual designated by an eligible institution and authorized by the General Services Administration (GSA) to visit property sites for the purpose of inspecting personal property intended for use by the institution.

(f) *Excess personal property*—is any personal property under the control of a Federal agency that is no longer needed.

(g) *Cannibalization*—is the dismantling of equipment for parts to repair or enhance other equipment.

### § 3200.4 Procedures.

(a) To receive information concerning the availability of Federal excess personal property, an eligible institution's property management officer may contact their regional GSA, Accountable Utilization Officer. All property management officers of eligible institutions will be placed on the Department of Agriculture's mailing list for information on the availability of property. USDA excess property first will be screened by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the PMIS/PROP system.

(b) Excess property selected by screeners of eligible institutions should be inspected whenever possible, or the holding agency should be contacted to verify the condition of the items, because interpretation of condition codes varies among agencies.

(c) If the condition of the item is acceptable, the institution should

"freeze" (reserve) items by calling the appropriate GSA office or USDA's Departmental Excess Personal Property Coordinator (DEPPC). Items are usually allocated on a "first come-first serve basis." Since GSA may have several "freezes" on a piece of equipment, it is critical that the paperwork be submitted as soon as possible.

(d) Property requests are submitted by mail or fax on a Standard Form 122, "Transfer Order Excess Personal Property," with a written justification statement explaining how the property will be used for research, educational, technical, or scientific activity or for related programs.

(e) The SF-122 should be forwarded to USDA, OPPM/PMD for approval. As confirmation of approval, the institution's Property Management Officer will receive a stamped copy of the SF-122. If the request is disapproved, it will be returned to the Property Management Officer with an appropriate explanation.

(f) Once the excess personal property is physically received, the institution is required to immediately return a copy of the SF-122, to OPPM/PMD, indicating receipt of requested items. Cancellations should also be reported to OPPM/PMD.

**Note:** OPPM/PMD shall send an informational copy of all USDA transactions to GSA.

### § 3200.5 Dollar limitation.

There is no dollar limitation on excess personal property obtained under these procedures.

### § 3200.6 Restrictions.

(a) The Department's authorized official will approve the transfer of excess personal property in the following groups for the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs.

Eligible Federal supply code groups	Name
12 .....	Fire Control Equipment.
19 .....	Ships, Small Crafts, Pontoons, and Floating Docks.
22 .....	Railway Equipment.
23 .....	Vehicles, Motor Vehicles, Trailers and Cycles.
24 .....	Tractors.
26 .....	Tires and Tubes.
28 .....	Engines, Turbines and Components.
29 .....	Engine Accessories.
30 .....	Mechanical Power Transmission Equipment.
31 .....	Bearings.
32 .....	Woodworking Machinery and Equipment.
34 .....	Metal Working Machinery.
35 .....	Service and Trade Equipment.
36 .....	Special Industry Machinery.
37 .....	Agricultural Machinery and Equipment.
38 .....	Construction, Mining, Excavating, and Highway Maintenance Equipment.
39 .....	Material Handling Equipment.
40 .....	Rope, Cable, Chain, and Fittings.
41 .....	Refrigeration, Air Conditioning and Air Circulating Equipment.
42 .....	Fire Fighting, Rescue, and Safety Equipment.
43 .....	Pumps, Compressors.
44 .....	Furnace, Steam Plant, and Drying.
45 .....	Plumbing, Heating, and Sanitation Equipment; and Nuclear Reactors.
46 .....	Water Purification and Sewage Treatment Equipment.
47 .....	Pipe, Tubing, Hose, and Fittings.
49 .....	Maintenance and Repair Shop Equipment.
51 .....	Hand Tools.
52 .....	Measuring Tools.
53 .....	Hardware and Abrasives.
54 .....	Prefabricated Structures and Scaffolding.
55 .....	Lumber, Millwork, Plywood, and Veneer.
56 .....	Construction and Building Materials.
58 .....	Communication, Detection, and Coherent Radiation Equipment.
59 .....	Electrical and Electronic Equipment Components.
60 .....	Fiber Optics Materials, Components, Assemblies, and Accessories.
61 .....	Electric Wire, and Power and Distribution Equipment.
62 .....	Lighting Fixtures and Lamps.
63 .....	Alarm, Signal, and Security Detection Systems.
65 .....	Medical, Dental, and Veterinary Equipment and Supplies.
66 .....	Instruments and Laboratory Equipment.
67 .....	Photographic Equipment.
69 .....	Training Aids and Devices.
70 .....	General Purpose Automatic Data Processing Equipment (Including Firmware), Software, and Support Equipment.
71 .....	Furniture.
72 .....	Household and Commercial Furnishings and Appliances.
73 .....	Food Preparation and Serving Equipment.

Eligible Federal supply code groups	Name
74 .....	Office Machines, Text Processing Systems and Visible Record Equipment.
75 .....	Office Supplies and Devices.
76 .....	Books, Maps, and Other Publications.
77 .....	Musical Instruments, Phonographs, and Home-type Radios.
78 .....	Recreational and Athletic Equipment.
79 .....	Cleaning Equipment and Supplies.
80 .....	Brushes, Paints, Sealers, and Adhesives.
81 .....	Containers, Packaging and Packing Supplies.
83 .....	Textiles, Leather, Furs, Apparel and Shoe Findings, Tents, and Flags.
84 .....	Clothing, Individual Equipment and Insignia.
85 .....	Toiletries.
87 .....	Agricultural Supplies.
88 .....	Live Animals.
91 .....	Fuels, Lubricants, Oils and Waxes.
93 .....	Nonmetallic Fabricated Materials.
94 .....	Nonmetallic Crude Materials.
95 .....	Metal Bars, Sheets, and Shapes.
96 .....	Ores, Minerals and Their Primary Products.
99 .....	Miscellaneous.

**Note:** Requests for items in FSC Groups other than the above shall be referred to the Director of OPPM for consideration and approval.

(b) Excess personal property may be transferred for the purpose of cannibalization, provided the institution submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater benefit than utilization of the item in its existing form.

#### § 3200.7 Title.

Title to excess personal property obtained under part 3200 will automatically pass to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions once OPPM/PMD receives the SF-122 indicating that the institution has received the property.

#### § 3200.8 Costs.

Excess personal property under this law is free of charge. However, the institution must pay all costs associated with packaging and transportation. The institution should specify the method of shipment on the SF-122.

#### § 3200.9 Accountability and recordkeeping.

USDA requires that Federal excess personal property received by an eligible institution pursuant to this Part shall be placed into use for a research, educational, technical, or scientific activity or for related purpose within 1 year of receipt of the property and used for such purpose for at least 1 year thereafter. The institution's Property Management Officer must maintain accountable records identifying the property's location, description, utilization and value. The use of excess Federal personal property received under this part is subject to inspection by an authorized representative of USDA at all reasonable times.

#### § 3200.10 Disposal.

When the property is no longer needed by the institution, it may be used in support of other Federal projects or sold and the proceeds used for research, educational technical, and scientific activities or for related programs of the recipient institution.

#### § 3200.11 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property transferred under this Part.

#### PARTS 3201-3299—[RESERVED]

**W. R. Ashworth,**

*Director, Office of Procurement and Property Management.*

[FR Doc. 98-1506 Filed 1-22-98; 8:45 am]

BILLING CODE 3410-XE-P

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-ANE-45-AD]

RIN 2120-AA64

#### Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT8D series turbofan engines. This proposal would require a one-time visual and eddy current inspection of certain stage 3-4 low pressure compressor (LPC) disks and stage 7-12

high pressure compressor (HPC) disks identified by part number and serial number, for arc burns in tie rod, shielding, and pressure balance holes, and, if necessary, repair of tie rod holes. This proposal is prompted by reports of improper fixturing during the electrolytic cleaning process of certain compressor disks at a certified repair station, Avial, currently Greenwich Air Services Inc., certificate number RA1R445K of Dallas, Texas, that can result in damage to the disks in the form of arc burns. The actions specified by the proposed AD are intended to prevent compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

**DATES:** Comments must be received by February 23, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-45-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Greenwich Air Services, 9311 Reeves Street, Dallas TX 75235-2095; telephone (214) 956-5310, fax (214) 956-5523. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7175, fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before

the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-45-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-45-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

#### Discussion

The Federal Aviation Administration (FAA) received a report of certain low pressure compressor (LPC) and high pressure compressor (HPC) disks, installed on Pratt & Whitney (PW) JT8D series turbofan engines, that were improperly fixtured during the electrolytic cleaning process at a certain repair station. This improper fixturing can lead to damage to compressor disks in the form of arc burns. Arc burns can degrade disk material properties and create a stress concentration that results in premature cracking of a disk and subsequent failure. This condition, if not corrected, could result in compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

A metallurgical laboratory procedure and a new highly sensitive eddy current inspection technique have been developed to identify arc-burn defects. Because the inspections and repair require familiarization with newly developed techniques and require facilities, equipment and personnel

outside the scope of a typical repair facility, the FAA has determined that only the facility named in the AD are currently approved to perform the required inspections and repairs. Operators who desire to use another facility must apply for approval using the alternate method of compliance procedure provided in paragraph (d) of the AD.

The FAA has reviewed and approved the technical contents of Greenwich Air Services Technical Instruction (TI) 885 dated, October 20, 1997, that describes procedures for visual and eddy current inspections and repairs for compressor disks which have been exposed to the potential of arc burn.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, at the next shop visit after the effective date of this AD, a one-time visual and eddy current inspection of compressor disks to detect arc burn damage and if appropriate, repair of damaged area. The actions would be required to be accomplished in accordance with the technical instruction described previously.

There are a total of 1,388 compressor disks exposed to improper fixturing during the electrolytic cleaning process. The FAA estimates that 1,054 of these disks currently remain in service in the worldwide fleet, which represents approximately 210 engines. The FAA also estimates that 840 of the disks affected by the proposed AD are installed in engines installed on aircraft of U.S. registry. It will take approximately 30 work hours to accomplish the proposed actions per disk, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$23 per disk. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1,531,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Pratt & Whitney:** Docket No. 97-ANE-45-AD.

**Applicability:** Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, -17AR, -209, -217, -217A, -217C, and -219 model turbofan engines which have a compressor disk installed identified by part number and serial number in Table 1 of this AD. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC-9 and MD80 series aircraft.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments,

inflight engine shutdown, and airframe damage, accomplish the following:

(a) At the next shop visit after the effective date of this AD, remove, visually inspect, eddy current inspect, and repair or replace with a serviceable part disks identified by part number and serial number in Table 1 of this AD in accordance with Greenwich Air Services Technical Instruction (TI) 885, dated October 20, 1997.

TABLE 1

Stage	P/N	S/N
3 .....	745803	H13469
3 .....	745803	N48096
3 .....	745803	N48361
3 .....	745803	P77936
3 .....	745803	P77942
3 .....	745803	P78298
3 .....	745803	P98041
3 .....	745803	P98334
3 .....	745803	R18766
3 .....	745803	R18989
3 .....	745803	R19227
3 .....	745803	R73555
3 .....	745803	R74156
4 .....	745704	2A3332
4 .....	745704	2A4258
4 .....	745704	G51920
4 .....	745704	H04195
4 .....	745704	J46788
4 .....	745704	J76639
4 .....	745704	K11388
4 .....	745704	K11483
4 .....	745704	K12946
4 .....	745704	K52509
4 .....	745704	K53069
4 .....	745704	L60864
4 .....	745704	L61145
4 .....	777704	B114AA0034
4 .....	777704	B114AA0178
4 .....	777704	B114AA0274
4 .....	777704	BBDUA14597
4 .....	777704	BBDUAH4675
4 .....	777704	BBDUAH7390
4 .....	777704	J77499
4 .....	777704	J94590
4 .....	777704	K43182
4 .....	777704	L81216
4 .....	777704	L81217
4 .....	777704	L81218
4 .....	777704	L81224
4 .....	777704	L81688
4 .....	777704	M40670
4 .....	777704	M44376
4 .....	777704	M44384
4 .....	777704	M53723
4 .....	777704	M53753
4 .....	777704	M53810
4 .....	777704	M53815
4 .....	777704	N30898
4 .....	777704	N30938
4 .....	777704	N30943
4 .....	777704	N30947
4 .....	777704	N30956
4 .....	777704	N53261
4 .....	777704	N53280
4 .....	777704	N53284
4 .....	777704	N53290
4 .....	777704	N53296
4 .....	777704	N53299
4 .....	777704	N53309
4 .....	777704	N53317
4 .....	777704	N53324

TABLE 1—Continued

Stage	P/N	S/N
4 .....	777704	N53337
4 .....	777704	N53340
4 .....	777704	N53347
4 .....	777704	N53355
4 .....	777704	N53356
4 .....	777704	N53361
4 .....	777704	N53364
4 .....	777704	N53366
4 .....	777704	N53373
4 .....	777704	N53388
4 .....	777704	N53390
4 .....	777704	N53392
4 .....	777704	N53397
4 .....	777704	N53402
4 .....	777704	N53405
4 .....	777704	N53407
4 .....	777704	N53409
4 .....	777704	N53411
4 .....	777704	N53413
4 .....	777704	N53416
4 .....	777704	N53419
4 .....	777704	N53426
4 .....	777704	N53434
4 .....	777704	N53437
4 .....	777704	N53438
4 .....	777704	N53449
4 .....	777704	N63635
4 .....	777704	N63637
4 .....	777704	N63646
4 .....	777704	N63651
4 .....	777704	N63696
4 .....	777704	N63704
4 .....	777704	N63718
4 .....	777704	N63736
4 .....	777704	N63740
4 .....	777704	N63745
4 .....	777704	N63803
4 .....	777704	P50018
4 .....	777704	P50025
4 .....	777704	P50036
4 .....	777704	P50050
4 .....	777704	P50054
4 .....	777704	P50083
4 .....	777704	P63990
4 .....	777704	R21906
4 .....	777704	R21930
4 .....	777704	R21985
4 .....	777704	R21991
4 .....	777704	R41366
4 .....	777704	R42431
4 .....	777704	R56904
4 .....	777704	R56911
4 .....	777704	R56932
4 .....	777704	R56948
4 .....	777704	R75603
4 .....	777704	R75635
4 .....	777704	R75644
4 .....	777704	S28269
4 .....	777704	S28335
4 .....	777704	S28336
4 .....	777704	S65405
4 .....	777704	S65417
4 .....	777704	S87903
4 .....	777704	S91630
4 .....	777704	T00466
4 .....	777704	T48099
4 .....	777704	T48101
4 .....	777704	T48105
4 .....	799504	K23796
4 .....	799504	L61578
4 .....	799504	L61597
4 .....	799504	L89794

TABLE 1—Continued

Stage	P/N	S/N
4 .....	799504	M77214
4 .....	799504	N06109
4 .....	799504	N06248
4 .....	799504	N06731
4 .....	799504	N06908
4 .....	799504	N06911
4 .....	799504	N32484
4 .....	799504	N32493
4 .....	799504	N32514
4 .....	799504	N33627
4 .....	799504	N33880
4 .....	799504	N34238
4 .....	799504	N89280
4 .....	799504	N89817
4 .....	799504	N90599
4 .....	799504	N90812
4 .....	799504	N90849
4 .....	799504	P45299
4 .....	799504	P45435
4 .....	799504	R23598
4 .....	799504	R23753
4 .....	799504	R24022
4 .....	799504	R24310
4 .....	799504	R24543
4 .....	799504	S07095
4 .....	799504	S07147
4 .....	799504	S07164
4 .....	799504	S07250
4 .....	799504	S58162
4 .....	799504	S58237
4 .....	799504	T02774
4 .....	799504	T02897
4 .....	799504	T03020
4 .....	799504	T03027
4 .....	799504	T03038
4 .....	799504	T03047
7 .....	701407	7Z5379
7 .....	766007	G11181
7 .....	774407	B207AA0057
7 .....	774407	B207AA0164
7 .....	774407	B207AA0224
7 .....	774407	B207AA0270
7 .....	774407	B207AA0546
7 .....	774407	B207AA0719
7 .....	774407	B207AA0757
7 .....	774407	B207AA0768
7 .....	774407	B207AA0775
7 .....	774407	B207AA0913
7 .....	774407	BENCAH1914
7 .....	774407	BENCAH4273
7 .....	774407	BENCAJ5690
7 .....	774407	BENCAK1601
7 .....	774407	BENCAK5082
7 .....	774407	BENCAK5701
7 .....	774407	BENCAK6044
7 .....	774407	BENCAK6586
7 .....	774407	G78791
7 .....	774407	H19147
7 .....	774407	H75592
7 .....	774407	J08985
7 .....	774407	J17315
7 .....	774407	J17370
7 .....	774407	J72117
7 .....	774407	J93428
7 .....	774407	J93669
7 .....	774407	K78068
7 .....	774407	K78149
7 .....	774407	K78378
7 .....	774407	L23953
7 .....	774407	L71885
7 .....	774407	L71922
7 .....	774407	L72170

TABLE 1—Continued

Stage	P/N	S/N
7	774407	L72261
7	774407	M38646
7	774407	M44626
7	774407	M60192
7	774407	M78767
7	774407	M83783
7	774407	M93487
7	774407	M93549
7	774407	N24007
7	774407	N24131
7	774407	N58891
7	774407	N58905
7	774407	N59040
7	774407	N70414
7	774407	N88273
7	774407	N88281
7	774407	N88306
7	774407	N93477
7	774407	N95003
7	774407	P14688
7	774407	P14851
7	774407	P16547
7	774407	P35320
7	774407	P35374
7	774407	P35475
7	774407	P54474
7	774407	P54594
7	774407	P60383
7	774407	P60383
7	774407	P81375
7	774407	P81382
7	774407	P86353
7	774407	R19478
7	774407	R31305
7	774407	R37450
7	774407	R46879
7	774407	R46934
7	774407	R57593
7	774407	R57744
7	774407	R57769
7	774407	R72169
7	774407	R72236
7	774407	R81458
7	774407	R81507
7	774407	R81527
7	774407	R81612
7	774407	R90895
7	774407	S05652
7	774407	S13843
7	774407	S14099
7	774407	S14103
7	774407	S36805
7	774407	S36885
7	774407	S36896
7	774407	S36994
7	774407	S36995
7	774407	S37166
7	774407	S37554
7	774407	T04613
7	774407	T04687
7	774407	T04739
7	774407	T04806
7	774407	T04812
7	774407	T04814
7	774407	T04837
7	774407	T04843
7	774407	T04885
7	774407	T04903
7	774407	T04960
7	774407	T05000
7	774407	T05108
7	5006007-02	BENCAK9696

TABLE 1—Continued

Stage	P/N	S/N
7	5006007-02	BENCAK9900
7	5006007-02	BENCAL0760
7	5006007-02	BENCAL1937
7	5006007-02	BENCAL4577
7	5006007-02	BENCAL5766
7	5006007-01	AA0297
7	5006007-01	B207AA0069
7	5006007-01	B207AA0135
7	5006007-01	B207AA0155
7	5006007-01	B207AA0172
7	5006007-01	B207AA0177
7	5006007-01	B207AA0354
7	5006007-01	B207AA0355
7	5006007-01	B207AA0421
7	5006007-01	B207AA0493
7	5006007-01	B207AA0533
7	5006007-01	B207AA0571
7	5006007-01	B207AA0684
7	5006007-01	B207AA0756
7	5006007-01	B207AA0811
7	5006007-01	BENCAH3454
7	5006007-01	BENCAH4003
7	5006007-01	BENCAH4004
7	5006007-01	BENCAH4371
7	5006007-01	BENCAH4373
7	5006007-01	BENCAH4794
7	5006007-01	BENCAH4797
7	5006007-01	BENCAH5400
7	5006007-01	BENCAH5401
7	5006007-01	BENCAJ8559
7	5006007-01	BENCAJ8585
7	5006007-01	BENCAJ8614
7	5006007-01	BENCAJ8626
7	5006007-01	BENCAJ8656
7	5006007-01	BENCAJ9106
7	5006007-01	BENCAK5959
7	5006007-01	BENCAK5963
7	5006007-01	BENCAK9770
7	5006007-01	BENCAK9771
7	5006007-01	BENCAL2683
7	5006007-01	BENCAL3622
7	5006007-01	BENCAL3931
7	5006007-01	K20260
7	5006007-01	K20499
7	5006007-01	K20543
7	5006007-01	N09043
7	5006007-01	N65077
7	5006007-01	N65107
7	5006007-01	N65132
7	5006007-01	N93173
7	5006007-01	N93193
7	5006007-01	P23185
7	5006007-01	P23236
7	5006007-01	P49794
7	5006007-01	P49835
7	5006007-01	P92551
7	5006007-01	P92580
7	5006007-01	R12660
7	5006007-01	R12670
7	5006007-01	R12710
7	5006007-01	R35504
7	5006007-01	R35530
7	5006007-01	R36545
7	5006007-01	R43821
7	5006007-01	R54576
7	5006007-01	R54634
7	5006007-01	R79460
7	5006007-01	R79466
7	5006007-01	R92415
7	5006007-01	R92431
7	5006007-01	R92435
7	5006007-01	R92442

TABLE 1—Continued

Stage	P/N	S/N
7	5006007-01	S11034
7	5006007-01	S11058
7	5006007-01	S11154
7	5006007-01	S11156
7	5006007-01	S11179
7	5006007-01	S11182
7	5006007-01	S11186
7	5006007-01	S11202
7	5006007-01	S11206
7	5006007-01	S56884
7	5006007-01	S56888
7	5006007-01	S56998
7	5006007-01	S57073
7	5006007-01	S57075
7	5006007-01	S57117
7	5006007-01	S57120
7	5006007-01	S57156
7	5006007-01	S57157
7	5006007-01	S57192
7	5006007-01	S57220
7	5006007-01	S57332
7	5006007-01	S57354
7	5006007-01	S57405
7	5006007-01	S57412
7	5006007-01	S57420
7	5006007-01	S57424
7	5006007-01	S57437
7	5006007-01	S57452
7	5006007-01	S57467
7	5006007-01	S57470
7	5006007-01	S57589
8	748608	B208AA0043
8	748608	BENCAK1564
8	748608	H50069
8	748608	H64474
8	748608	H64605
8	748608	J57591
8	748608	J94824
8	748608	M54652
8	748608	M54835
8	748608	N14526
8	748608	N84300
8	748608	P-28517
8	748608	P26161
8	748608	P28493
8	748608	P28504
8	748608	P28505
8	748608	P28511
8	748608	P28542
8	748608	P28614
8	748608	P98885
8	748608	S01079
8	748608	S01090
8	748608	S50742
8	748608	S78049
8	748608	S78056
8	748608	S78100
8	787008	J76875
8	787008	K12869
8	787008	M77087
8	787008	N06806
8	787008	N32406
8	787008	N34151
8	787008	N89336
8	787008	N89554
8	787008	N90392
8	787008	N90682
8	787028	N89693
8	787208	AA0676
8	787208	B07691
8	787208	B228AA0169
8	787208	B228AA0242

TABLE 1—Continued

Stage	P/N	S/N
8	787208	B228AA0288
8	787208	B228AA0389
8	787208	B228AA0426
8	787208	B228AA0537
8	787208	B228AA0576
8	787208	B228AA0638
8	787208	B228AA0641
8	787208	B228AA0746
8	787208	B228AA0859
8	787208	B228AA0866
8	787208	B228AA0878
8	787208	B228AA0905
8	787208	B228AA1070
8	787208	B228AA1117
8	787208	BENCAH0302
8	787208	BENCAH1584
8	787208	BENCAH3448
8	787208	BENCAJ5729
8	787208	BENCAJ8175
8	787208	BENCAJ8767
8	787208	BENCAJ8773
8	787208	BENCAJ8790
8	787208	BENCAJ9142
8	787208	BENCAK4678
8	787208	BENCAK4771
8	787208	BENCAK5470
8	787208	BENCAK6156
8	787208	BENCAK6162
8	787208	BENCAK6398
8	787208	BENCAK8259
8	787208	BENCAK9252
8	787208	BENCAK9261
8	787208	BENCAL2604
8	787208	BENCAL2642
8	787208	BENCAL4344
8	787208	BENCAL7699
8	787208	BENCAL9217
8	787208	J76954
8	787208	K11762
8	787208	K12737
8	787208	K12765
8	787208	L89874
8	787208	M41582
8	787208	M41586
8	787208	M41918
8	787208	M76995
8	787208	M77005
8	787208	M77119
8	787208	N06396
8	787208	N33501
8	787208	N33769
8	787208	N33774
8	787208	N33776
8	787208	N33784
8	787208	N34183
8	787208	N34207
8	787208	N89068
8	787208	N89079
8	787208	N89082
8	787208	N89087
8	787208	N89089
8	787208	N89404
8	787208	N89409
8	787208	N89699
8	787208	N89702
8	787208	N89708
8	787208	N89895
8	787208	N89898
8	787208	N90251
8	787208	N90344
8	787208	N90990
8	787208	P43853

TABLE 1—Continued

Stage	P/N	S/N
8	787208	P43872
8	787208	P43891
8	787208	P43956
8	787208	P43986
8	787208	P44338
8	787208	P45405
8	787208	R23233
8	787208	R23836
8	787208	R23873
8	787208	R24174
8	787208	R24227
8	787208	R24677
8	787208	R24739
8	787208	R24816
8	787208	R24824
8	787208	R91601
8	787208	R91825
8	787208	R91870
8	787208	R91947
8	787208	R92114
8	787208	R92308
8	787208	S07578
8	787208	S07629
8	787208	S07758
8	787208	S07768
8	787208	S07775
8	787208	S39269
8	787208	S39468
8	787208	S39513
8	787208	S39638
8	787208	S39655
8	787208	S39663
8	787208	S39753
8	787208	S39822
8	787208	S39837
8	787208	S39951
8	787208	S39973
8	787208	S39995
8	787208	S40027
8	787208	S40038
8	787208	S40077
8	787208	S40079
8	787208	S40095
8	789608	H03942
8	789608	J21516
8	792038	B228AA0039
8	792038	BENCAJ8836
8	797938	B228AA0487
8	797938	B228AA1034
8	797938	BENCAJ8910
8	797938	BENCAL5921
8	797938	N06290
8	797938	N33267
8	797938	N90703
8	797938	N90970
8	797938	S70436
8	797938	T03512
8	5005008-01	T03421
8	5005808-01	B228AA0052
8	5005808-01	B228AA0287
8	5005808-01	B228AA0405
8	5005808-01	B228AA0490
8	5005808-01	B228AA0519
8	5005808-01	BENCAH1577
8	5005808-01	L60763
8	5005808-01	M77630
8	5005808-01	N06193
8	5005808-01	N32395
8	5005808-01	N32524
8	5005808-01	N33073
8	5005808-01	N33304
8	5005808-01	N33466

TABLE 1—Continued

Stage	P/N	S/N
8	5005808-01	N89447
8	5005808-01	N89464
8	5005808-01	P44800
8	5005808-01	P45226
8	5005808-01	R24458
8	5005808-01	R91359
8	5005808-01	R91787
8	5005808-01	S07967
8	5005808-01	S70327
8	5005808-01	S70429
8	5005808-01	S70463
8	5005808-01	S70494
8	5005808-01	S70520
8	5005808-01	T03317
8	5005808-01	T03452
8	5005808-01	T03476
8	5005808-01	T03506
8	5005808-01	T03549
8	5006008-01	R24001
9	701509	5A1936
9	701509	J89101
9	701509	L56782
9	701509	L85804
9	701509	M09404
9	701509	M73608
9	701509	M84236
9	701509	N02058
9	701509	N02998
9	701509	N209AA0242
9	701509	N209AA0246
9	701509	N209AA0323
9	701509	N209AA0418
9	701509	N209AA0634
9	701509	N22582
9	701509	N56942
9	701509	N56952
9	701509	N79878
9	701509	N97637
9	701509	N97707
9	701509	N98354
9	701509	N99323
9	701509	NENCAH0592
9	701509	NENCAH0697
9	701509	NENCAH0883
9	701509	NENCAH1173
9	701509	NENCAH1422
9	701509	NENCAH1432
9	701509	P11303
9	701509	P11463
9	701509	P12707
9	701509	P52176
9	701509	P52596
9	701509	P52608
9	701509	P97654
9	701509	P97704
9	701509	P98673
9	701509	R18109
9	701509	R18342
9	701509	R18385
9	701509	R45763
9	701509	R45850
9	701509	R46297
9	701509	R46394
9	701509	R46403
9	701509	R72835
9	701509	R72839
9	701509	R72846
9	701509	R73002
9	701509	R74484
9	701509	S00704
9	701509	S00765
9	701509	S00824

TABLE 1—Continued

Stage	P/N	S/N
9	701509	S00886
9	701509	S00909
9	701509	S00910
9	701509	S18837
9	701509	S18941
9	701509	S19027
9	701509	S50340
9	701509	S70059
9	701509	S77627
9	701509	S77671
9	701509	S77784
9	701509	S77809
9	701509	T18893
9	701509	T18909
9	701509	T27458
9	701509	T27587
9	739509	H17622
9	772509	K23758
9	772509	K24989
9	772509	K86136
9	772509	L15428
9	772509	M40393
9	772509	M40397
9	772509	N42380
9	772509	N56529
9	772509	N79955
9	772509	N79970
9	772509	N80784
9	772509	N96815
9	772509	N96816
9	772509	N96904
9	772509	N96905
9	772509	N97800
9	772509	N97806
9	772509	N99352
9	772509	N99353
9	772509	N99362
9	772509	N99367
9	772509	N99368
9	772509	N99376
9	772509	P11398
9	772509	P11407
9	772509	P11411
9	772509	P11414
9	772509	P11419
9	772509	P12231
9	772509	P76976
9	772509	P76987
9	772509	P76990
9	772509	P76992
9	772509	P76994
9	772509	R17787
9	772509	S01222
9	772509	S02183
9	772509	S50825
9	798509	AA0579
9	798509	B209AA0068
9	798509	B209AA0086
9	798509	B209AA0100
9	798509	B209AA0103
9	798509	B209AA0105
9	798509	B209AA0185
9	798509	B209AA0261
9	798509	B209AA0304
9	798509	B209AA0364
9	798509	B209AA0420
9	798509	B209AA0429
9	798509	B209AA0434
9	798509	B209AA0461
9	798509	B209AA0518
9	798509	B209AA0542
9	798509	B209AA0551

TABLE 1—Continued

Stage	P/N	S/N
9	798509	B209AA0619
9	798509	B209AA0632
9	798509	B209AA0649
9	798509	B209AA0707
9	798509	BENCAH2176
9	798509	BENCAJ6152
9	798509	BENCAJ9319
9	798509	BENCAJ9337
9	798509	BENCAJ9348
9	798509	BENCAJ9359
9	798509	BENCAJ9366
9	798509	BENCAK0166
9	798509	BENCAK4404
9	798509	BENCAK4409
9	798509	BENCAL0725
9	798509	BENCAL2575
9	798509	BENCAL4022
9	798509	BENCAL6238
9	798509	N03324
9	798509	N42399
9	798509	N42401
9	798509	N56700
9	798509	N97809
9	798509	N99501
9	798509	P53159
9	798509	P77576
9	798509	R72583
9	798509	R73591
9	798509	R74285
9	798509	S02121
9	798509	S02165
9	798509	S79341
9	798509	S79364
9	798509	S79409
9	798509	S79414
9	798509	S94376
9	798509	S94384
9	798509	S94391
9	770510	G80186
9	772510	B210AA0003
9	772510	B210AA0024
9	772510	B210AA0062
9	772510	B210AA0128
9	772510	B210AA0263
9	772510	B210AA0339
9	772510	B210AA0398
9	772510	B210AA0520
9	772510	B210AA0538
9	772510	B210AA0549
9	772510	B210AA0563
9	772510	B210AA0619
9	772510	B210AA0684
9	772510	B210AA0727
9	772510	B210AA0744
9	772510	B210AA0785
9	772510	B210AA0860
9	772510	B210AA0862
9	772510	B210AA0956
9	772510	B210AA0984
9	772510	B210AA1073
9	772510	B210AA1081
9	772510	B210AA1137
9	772510	BENCAH1958
9	772510	BENCAH2165
9	772510	BENCAH2280
9	772510	BENCAJ5741
9	772510	BENCAJ9159
9	772510	BENCAJ9705
9	772510	BENCAJ9757
9	772510	BENCAJ9767
9	772510	BENCAJ9773
9	772510	BENCAJ9805

TABLE 1—Continued

Stage	P/N	S/N
10	772510	BENCAK4597
10	772510	BENCAK5154
10	772510	BENCAK5350
10	772510	BENCAK5735
10	772510	BENCAK5773
10	772510	BENCAK6465
10	772510	BENCAK9082
10	772510	BENCAK9123
10	772510	BENCAK9429
10	772510	BENCAK9434
10	772510	BENCAL1600
10	772510	BENCAL1635
10	772510	BENCAL2434
10	772510	BENCAL3279
10	772510	BENCAL5558
10	772510	BENCAL6141
10	772510	BENCAL6373
10	772510	H17769
10	772510	H32904
10	772510	H34713
10	772510	H57950
10	772510	H76378
10	772510	K56398
10	772510	K66132
10	772510	K86040
10	772510	L15008
10	772510	L32061
10	772510	L55910
10	772510	L56859
10	772510	L86006
10	772510	M10588
10	772510	M10987
10	772510	M39587
10	772510	M39591
10	772510	M49011
10	772510	M49358
10	772510	M49359
10	772510	M73918
10	772510	M86490
10	772510	N02251
10	772510	N02274
10	772510	N11091
10	772510	N22833
10	772510	N42134
10	772510	N56280
10	772510	N57181
10	772510	N57382
10	772510	N57418
10	772510	N57437
10	772510	N80225
10	772510	N80703
10	772510	N80716
10	772510	N80718
10	772510	N81110
10	772510	N81114
10	772510	N81474
10	772510	N97025
10	772510	N97067
10	772510	N97527
10	772510	N97553
10	772510	N97574
10	772510	N97591
10	772510	N97832
10	772510	N98539
10	772510	N98750
10	772510	N98764
10	772510	N98768
10	772510	N98798
10	772510	P11004
10	772510	P11017
10	772510	P11029
10	772510	P11039

TABLE 1—Continued

Stage	P/N	S/N
10	772510	P11087
10	772510	P11094
10	772510	P11101
10	772510	P11562
10	772510	P11575
10	772510	P11834
10	772510	P12009
10	772510	P12612
10	772510	P12615
10	772510	P12645
10	772510	P12648
10	772510	P51452
10	772510	P51454
10	772510	P51833
10	772510	P51883
10	772510	P52238
10	772510	P53116
10	772510	P53207
10	772510	P53327
10	772510	P76886
10	772510	P76891
10	772510	P77070
10	772510	P77161
10	772510	P77180
10	772510	P77423
10	772510	P77618
10	772510	P77663
10	772510	P77668
10	772510	P77744
10	772510	P77752
10	772510	P97017
10	772510	P98117
10	772510	P98258
10	772510	P98840
10	772510	R18022
10	772510	R18124
10	772510	R18611
10	772510	R18665
10	772510	R19275
10	772510	R46329
10	772510	R46679
10	772510	R72606
10	772510	R72615
10	772510	R72617
10	772510	R72874
10	772510	R73345
10	772510	R74396
10	772510	S01267
10	772510	S01277
10	772510	S01369
10	772510	S01501
10	772510	S01631
10	772510	S01680
10	772510	S19280
10	772510	S19293
10	772510	S19294
10	772510	S19298
10	772510	S19328
10	772510	S19440
10	772510	S19447
10	772510	S19458
10	772510	S19467
10	772510	S19486
10	772510	S19512
10	772510	S51089
10	772510	S51144
10	772510	S51176
10	772510	S51210
10	772510	S78237
10	772510	S78294
10	772510	S78298
10	772510	S78318

TABLE 1—Continued

Stage	P/N	S/N
10	772510	S78439
10	772510	S78464
10	772510	S78511
10	772510	S78623
10	772510	S78642
10	772510	S78724
10	772510	T19014
10	772510	T19091
10	772510	T19152
10	772510	T19169
10	772510	T28070
10	772510	T28091
10	772510	T28136
10	772510	T28138
10	772510	T49026
10	772510	T49044
10	772510	T49055
10	772510	T49068
10	772510	T49089
11	701411	G29388
11	701411	G43952
11	769611	H16901
11	772511	AA0065
11	772511	B211AA0047
11	772511	B211AA0157
11	772511	B211AA0171
11	772511	B211AA0263
11	772511	B211AA0301
11	772511	B211AA0349
11	772511	B211AA0356
11	772511	B211AA0517
11	772511	B211AA0529
11	772511	B211AA0599
11	772511	B211AA0622
11	772511	B211AA0624
11	772511	B211AA0705
11	772511	B211AA0798
11	772511	B211AA0823
11	772511	B211AA0945
11	772511	B211AA1004
11	772511	B211AA1107
11	772511	B211AA1166
11	772511	B211AA1212
11	772511	B211AA1292
11	772511	B211AA1360
11	772511	BENCAH0264
11	772511	BENCAH2171
11	772511	BENCAH5424
11	772511	BENCAJ8130
11	772511	BENCAK0910
11	772511	BENCAK7121
11	772511	BENCAK7336
11	772511	BENCAK7407
11	772511	BENCAK7412
11	772511	BENCAK7417
11	772511	BENCAK7523
11	772511	BENCAL2881
11	772511	BENCAL2959
11	772511	BENCAL3030
11	772511	H58238
11	772511	H99450
11	772511	J24528
11	772511	J68900
11	772511	J88334
11	772511	K24665
11	772511	K35705
11	772511	K85911
11	772511	L15671
11	772511	L30512
11	772511	L84603
11	772511	L84967
11	772511	M11198

TABLE 1—Continued

Stage	P/N	S/N
11	772511	M11208
11	772511	M40116
11	772511	M49492
11	772511	M49540
11	772511	M49551
11	772511	M61349
11	772511	M61810
11	772511	M61821
11	772511	M61827
11	772511	M73414
11	772511	M86423
11	772511	M86943
11	772511	M87075
11	772511	N02874
11	772511	N03522
11	772511	N21358
11	772511	N22738
11	772511	N41160
11	772511	N41282
11	772511	N41646
11	772511	N41748
11	772511	N42587
11	772511	N42774
11	772511	N56399
11	772511	N56596
11	772511	N57323
11	772511	N57878
11	772511	N57899
11	772511	N57939
11	772511	N57953
11	772511	N80541
11	772511	N80554
11	772511	N80580
11	772511	N81408
11	772511	N93700
11	772511	N96929
11	772511	N96947
11	772511	N96955
11	772511	N97354
11	772511	N97368
11	772511	N97956
11	772511	N97977
11	772511	N98242
11	772511	N98245
11	772511	N98573
11	772511	N98587
11	772511	N98612
11	772511	N98949
11	772511	N98963
11	772511	N98974
11	772511	N98976
11	772511	N98981
11	772511	N98985
11	772511	N99526
11	772511	N99535
11	772511	N99551
11	772511	N99553
11	772511	N99564
11	772511	N99590
11	772511	P03620
11	772511	P11615
11	772511	P11637
11	772511	P11959
11	772511	P11981
11	772511	P12385
11	772511	P12387
11	772511	P12399
11	772511	P12743
11	772511	P12777
11	772511	P12930
11	772511	P51979
11	772511	P52109

TABLE 1—Continued

Stage	P/N	S/N
11	772511	P52732
11	772511	P52903
11	772511	P52910
11	772511	P76731
11	772511	P76820
11	772511	P76832
11	772511	P76857
11	772511	P77637
11	772511	P77642
11	772511	P97786
11	772511	R05382
11	772511	R05539
11	772511	R05747
11	772511	R29690
11	772511	R29884
11	772511	R30070
11	772511	R30119
11	772511	R30137
11	772511	R30157
11	772511	R30194
11	772511	R30226
11	772511	R30258
11	772511	R30313
11	772511	R30429
11	772511	R30504
11	772511	R30534
11	772511	R30617
11	772511	R30625
11	772511	R30808
11	772511	R30810
11	772511	R30906
11	772511	R30941
11	772511	R30993
11	772511	R31009
11	772511	R31035
11	772511	R31073
11	772511	R31118
11	772511	R46248
11	772511	R46361
11	772511	S03667
11	772511	S03741
11	772511	S03745
11	772511	S03805
11	772511	S04156
11	772511	S04451
11	772511	S04460
11	772511	S04473
11	772511	S04542
11	772511	S04543
11	772511	S04557
11	772511	S04564
11	772511	S04582
11	772511	S04649
11	772511	S80373
11	772511	S80389
11	772511	S80465
11	772511	S80547
11	772511	S80588
11	772511	S80617
11	772511	S80682
11	772511	S80740
11	772511	S80765
11	772511	T22044
11	772511	T22052
11	772511	T22099
11	772511	T22202
11	772511	T22236
11	772511	T22261
11	772511	T22353
11	772511	T22378
11	772511	T22395
11	772511	T22405

TABLE 1—Continued

Stage	P/N	S/N
11	772511	T22521
11	772511	T22533
11	772511	T22593
11	772511	T22608
11	772511	T22653
11	772511	T22797
11	772511	T22835
11	772511	T22873
11	772511	T22895
11	772511	T22949
11	772511	T23006
12	717312	2B1946
12	717312	3A7441
12	772512	B212AA0565
12	772512	B212AA0864
12	772512	H58261
12	772512	H58448
12	772512	J23046
12	772512	J68527
12	772512	J89283
12	772512	K04097
12	772512	K23952
12	772512	K23992
12	772512	K35819
12	772512	K55628
12	772512	K55951
12	772512	K56079
12	772512	K66470
12	772512	K66500
12	772512	K86442
12	772512	K86447
12	772512	L15502
12	772512	L30899
12	772512	L31589
12	772512	L32003
12	772512	L56276
12	772512	L56294
12	772512	L56303
12	772512	L56308
12	772512	L56886
12	772512	L85095
12	772512	L86236
12	772512	M10233
12	772512	M10966
12	772512	M40081
12	772512	M49574
12	772512	M49665
12	772512	M73392
12	772512	M84838
12	772512	N02466
12	772512	N03990
12	772512	N21261
12	772512	N22069
12	772512	N22894
12	772512	N41128
12	772512	N41249
12	772512	N41717
12	772512	N42236
12	772512	N42871
12	772512	N56325
12	772512	N57451
12	772512	N58072
12	772512	N58127
12	772512	N80601
12	772512	N81044
12	772512	N81173
12	772512	N81187
12	772512	N97079
12	772512	N97083
12	772512	N97109
12	772512	N97384
12	772512	N97438

TABLE 1—Continued

Stage	P/N	S/N
12	772512	N97455
12	772512	N97457
12	772512	N97893
12	772512	N97916
12	772512	N98152
12	772512	N98162
12	772512	N98654
12	772512	N98657
12	772512	N98680
12	772512	N98691
12	772512	N99016
12	772512	N99025
12	772512	N99049
12	772512	N99057
12	772512	N99094
12	772512	N99125
12	772512	P11154
12	772512	P11179
12	772512	P11183
12	772512	P11193
12	772512	P11252
12	772512	P11678
12	772512	P11699
12	772512	P11877
12	772512	P11879
12	772512	P11909
12	772512	P12244
12	772512	P12277
12	772512	P12493
12	772512	P12519
12	772512	P51414
12	772512	P52139
12	772512	P52409
12	772512	P52520
12	772512	P52871
12	772512	P53141
12	772512	P53351
12	772512	P53396
12	772512	P72298
12	772512	P76702
12	772512	P76921
12	772512	P76931
12	772512	P77096
12	772512	P77294
12	772512	P77338
12	772512	P77695
12	772512	P77796
12	772512	P78510
12	772512	P97315
12	772512	R17703
12	772512	R17746
12	772512	R18201
12	772512	R18319
12	772512	R18589
12	772512	R19042
12	772512	R45067
12	772512	R45829
12	772512	R46100
12	772512	R46108
12	772512	R46121
12	772512	R46707
12	772512	R52615
12	772512	R72811
12	772512	R73024
12	772512	R73783
12	772512	R74357
12	772512	S01858
12	772512	S01860
12	772512	S01914
12	772512	S01923
12	772512	S01949
12	772512	S01969

TABLE 1—Continued

Stage	P/N	S/N
12	772512	S01971
12	772512	S01980
12	772512	S01994
12	772512	S02002
12	772512	S02007
12	772512	S19593
12	772512	S19644
12	772512	S19843
12	772512	S51370
12	772512	S51437
12	772512	S51514
12	772512	S51519
12	772512	S51560
12	772512	S51571
12	772512	S78825
12	772512	S78841
12	798512	B212AA0009
12	798512	B212AA0045
12	798512	B212AA0051
12	798512	B212AA0060
12	798512	B212AA0073
12	798512	B212AA0077
12	798512	B212AA0082
12	798512	B212AA0142
12	798512	B212AA0155
12	798512	B212AA0290
12	798512	B212AA0293
12	798512	B212AA0361
12	798512	B212AA0428
12	798512	B212AA0586
12	798512	B212AA0618
12	798512	B212AA0647
12	798512	B212AA0735
12	798512	B212AA0747
12	798512	B212AA0942
12	798512	B212AA0974
12	798512	B212AA1031
12	798512	B212AA1062
12	798512	B212AA1098
12	798512	B212AA1173
12	798512	BENCAH1931
12	798512	BENCAH4104
12	798512	BENCAJ4925
12	798512	BENCAJ6158
12	798512	BENCAJ7821
12	798512	BENCAJ8115
12	798512	BENCAJ9478
12	798512	BENCAJ9497
12	798512	BENCAJ9503
12	798512	BENCAJ9530
12	798512	BENCAJ9617
12	798512	BENCAJ9673
12	798512	BENCAK0455
12	798512	BENCAK2377
12	798512	BENCAK4552
12	798512	BENCAK5787
12	798512	BENCAK8605
12	798512	BENCAK9227
12	798512	BENCAL1655
12	798512	BENCAL2487
12	798512	BENCAL4173
12	798512	BENCAL6328
12	798512	BENCAL6602
12	798512	M86993
12	798512	N42703
12	798512	N42708
12	798512	N57617
12	798512	N57629
12	798512	N80087
12	798512	N80088
12	798512	N98138
12	798512	N99136

TABLE 1—Continued

Stage	P/N	S/N
12	798512	N99144
12	798512	P53305
12	798512	P76909
12	798512	P76916
12	798512	P77722
12	798512	P78317
12	798512	R17334
12	798512	R46556
12	798512	R46562
12	798512	R73201
12	798512	R74214
12	798512	S02217
12	798512	S02254
12	798512	S51853
12	798512	S79575
12	798512	S94530
12	798512	S94534
12	798512	S94538
12	798512	S94539
12	798512	S94569
12	798512	S94579
12	798512	S94590
12	798512	S94615
12	798512	T19187
12	798512	T19213
12	798512	T19220
12	798512	T19242
12	798512	T19277
12	798512	T19292
12	798512	T19314
12	798512	T28638
12	798512	T43059

(b) For the purpose of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool regardless of other planned maintenance.

(c) The accomplishment of the inspections and repairs specified in this AD must be performed at Greenwich Air Services Inc., certificate number RA1R445K of Dallas, Texas. Operators wishing to use another facility to perform the required inspections and repairs must apply for an alternate method of compliance in accordance with paragraph (d) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 8, 1998.

**James C. Jones,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 98-1483 Filed 1-22-98; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 255

[Docket No. OST-97-2881]

RIN 2105-AC65

### Computer Reservations System (CRS) Regulations (Part 255)

**AGENCY:** Office of the Secretary (DOT).

**ACTION:** Advanced notice of proposed rulemaking; notice extending reply comment period.

**SUMMARY:** The Department began a rulemaking to determine whether it should continue or modify its existing rules governing airline computer reservations systems (CRSs). On September 10, 1997, the Department published an advance notice of proposed rulemaking asking for comments on that matter. The Department is now extending the due date for reply comments on the advance notice to February 3, 1998, from the current due date, January 23. The Department is acting due to a party's request for an extension based on the complexity of the issues and the large number of comments.

**DATES:** Comments are due by February 3, 1998.

**ADDRESSES:** Reply comments must be filed in Room PL-401, Docket OST-97-2881, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731.

**SUPPLEMENTARY INFORMATION:** The Department's rules governing CRS

operations—14 CFR part 255—will expire on March 31, 1999, unless the Department readopts them or changes the rules' termination date to a later date. 62 FR 66272, December 18, 1997. We published an advance notice of proposed rulemaking to begin a proceeding for reexamining the rules and determining whether they should be readopted and, if so, whether they should be changed. 62 FR 47606, September 10, 1997. Under our modified schedule, the reply comments are due January 23 (the comments were due December 9). 62 FR 58700, October 30, 1997.

American Airlines, the principal owner of Sabre, the largest system and a major user of every system's services, has asked us to change the due date for reply comments to February 3, 1998 (as requested by our staff, American served its request on every commenter, so that all parties will be aware of its request). American notes that many comments were filed in response to our advance notice, that those comments raised a number of complex issues, and that some parties did not file their comments until well after the due date for comments. American contends that an extension of time for the reply comments is needed to ensure that all interested persons have a reasonable opportunity to review the initial comments and to prepare their reply comments. We intend to complete our rulemaking as soon as reasonably possible, given the impact of computer reservations system practices on airline competition, the public's ability to obtain accurate and complete information on airline services, and the airline and travel agency businesses. We have nonetheless decided to grant the short extension requested by American. Many parties filed comments, and those comments dealt with a number of difficult issues. We are likely to have a better record for preparing a notice of proposed rulemaking if we enable the parties to prepare reply comments that discuss in depth all of the issues. We will therefore extend the due date for reply comments to February 3.

Issued in Washington, D.C. on January 16, 1998.

**Nancy E. McFadden,**  
*General Counsel.*

[FR Doc. 98-1595 Filed 1-22-98; 8:45 am]

BILLING CODE 4910-62-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

#### Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** On May 3, 1996, the Commodity Futures Trading Commission ("Commission") published for comment in the **Federal Register** a proposed new Regulation 1.69<sup>1</sup> that would implement the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act ("CEA") as it was amended by Section 217 of the Futures Trading Practices Act of 1992 ("FTPA").<sup>2</sup> The Commission received eleven comment letters in response to the proposed rulemaking. Based upon those comments, the Commission has amended its proposed rulemaking and has determined to publish a revised proposed rulemaking for additional public comment.

Proposed Commission Regulation 1.69 would require self-regulatory organizations ("SRO") to adopt rules prohibiting governing board, disciplinary committee, and oversight panel members from deliberating or voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. The proposed rulemaking also would amend Commission Regulations 1.41 and 1.63 to make modifications made necessary by proposed Commission Regulation 1.69.

**DATES:** Comments on the proposed rule and rule amendments must be received by February 23, 1998.

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#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Section 217 of the FTPA amended Section 5a(a)(17) of the CEA to require that contract markets "provide for the avoidance of conflict of interest in deliberations by [their] governing board[s] and any disciplinary and

oversight committee[s]." <sup>3</sup> On May 3, 1996, the Commission published for public comment in the **Federal Register** a proposed new Regulation 1.69 which required SROs to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome.<sup>4</sup> The Commission also proposed to make related amendments to existing Commission Regulations 1.3, 1.41 and 1.63.

##### II. Comments Received

The Commission received eleven comment letters in response to its proposed rulemaking. The comment letters were submitted by six futures exchanges (the Chicago Board of Trade ("CBT"), the Chicago Mercantile Exchange ("CME"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), the Kansas City Board of Trade ("KCBT"), the New York Cotton Exchange ("NYCE"), and the New York Mercantile Exchange ("NYMEX")); two futures clearing organizations (the Board of Trade Clearing Corporation ("BOTCC") and the Commodity Futures Clearing Corporation of New York ("CFCCNY")); two futures trade associations (the Equity Owners' Association of the CME ("EOA") and the Futures Industry Association ("FIA")); and a registered futures association ("RFA") (the National Futures Association ("NFA")).

The Commission has reviewed these comments carefully and has decided to issue for public comment re-proposed versions of Regulation 1.69 and amended Regulations 1.41 and 1.63 with modifications from the originally-proposed versions. The following section of this release analyzes the Commission's rulemaking. Each provision of the Commission's originally-proposed rulemaking is described along with a discussion of comments which were made on that particular provision, an indication of how the provision has been amended in

<sup>3</sup> For the purposes of this release, the term *committee* generally will be used to include governing boards, disciplinary committees and oversight panels unless otherwise specified. This proposed rulemaking's definitions of governing board, disciplinary committee, oversight panel and SRO are discussed below in Section III.A.

<sup>4</sup> 61 FR 19869 (May 3, 1996). In that same **Federal Register** release, the Commission also published for public comment a proposed new Regulation 156.4 which required contract markets to make more readily available to the public the identity of members of broker associations at their respective exchanges. The Commission adopted Regulation 156.4, with minor modifications, on August 2, 1996. 61 FR 41496 (August 9, 1996).

<sup>1</sup> 61 FR 19869 (May 3, 1996).

<sup>2</sup> Pub. L. No. 102-546, § 217, 106 Stat. 3590 (1992).

this proposed rulemaking, and an explanation of the Commission's rationale for amending the provision.<sup>5</sup>

#### A. Reason for Rulemaking

The Commission notes that in addition to comments on particular provisions, there also were several general comments on the originally-proposed rulemaking. The BOTCC, CBT and CFCCNY each commented that no provision of CEA Section 5a(a)(17) requires that the Commission adopt a conflict of interest regulation other than Section 5a(a)(17)(C)'s requirement that the Commission establish conditions under which committee members required to abstain from voting on significant actions in which they have a substantial financial interest may nevertheless participate in deliberations. The NYCE similarly commented that Regulation 1.69 should be confined to the areas specified by CEA Section 5a(a)(17) and that, instead of a Commission rulemaking, SRO committees should only have to follow the traditional "bad faith" standard when determining conflicts of interest.<sup>6</sup>

The commenters are correct in stating that paragraph (C) of Section 5a(a)(17) is the only provision that requires Commission rulemaking. The other provisions require SRO rules. Such rules, however, must be submitted for Commission review pursuant to either CEA Section 5a(a)(12)(A), in the case of contract markets, and CEA Section 17(j), in the case of registered futures associations. The Commission believes, therefore, that it is appropriate to establish by rulemaking the standards

with which such SRO rules must conform.

While proposed Regulation 1.69 would implement the provisions of CEA Section 5a(a)(17), the proposed rulemaking also would give content to the "bad faith" standard traditionally applied to futures exchange governing boards.<sup>7</sup> By establishing specific factors to be considered with respect to barring persons with potential financial or personal interests from deliberating and voting on committee decisions, the Commission believes that proposed Regulation 1.69 would reduce the potential for collateral attack of such committee decisions on the grounds that they were made in "bad faith." The Commission has structured proposed Regulation 1.69 to provide guidance to SROs, consistent with the new provisions of the CEA, on what type of circumstances could be the basis for "bad faith" challenges.

The BOTCC commented that the SROs, not the Commission, should adopt procedures to address conflict of interest situations. The Commission notes that, while proposed Regulation 1.69 would establish minimum standards for conflict of interest restrictions, the SROs would have a large degree of discretion when they formulated their required implementing rules to adopt the procedures that were most compatible with their committees' structures and practices.

#### B. Enforcement of SRO Implementing Rules

The EOA commented that it believes that recently the SROs have often ignored their written and unwritten standards regarding participation in governance and committee matters. The Commission's proposed rulemaking would address this concern to the extent that it would require SROs to codify their conflict of interest standards consistent with Regulation 1.69. The Commission reminds the SROs that they would be required to enforce any such implementing rules pursuant to Section 5a(a)(8) of the CEA and that SRO enforcement of such rules would be monitored by the Commission as part of its ongoing rule enforcement review program.<sup>8</sup>

<sup>7</sup> See footnote 6 above.

<sup>8</sup> Should it ever become necessary, the Commission could enforce SRO rules implementing Regulation 1.69. For example, under CEA Section 8c(a)(1), the Commission can "suspend, expel, or otherwise discipline" an SRO committee member for violating an SRO Regulation 1.69-implementing rule should the subject SRO fail to take disciplinary action against such a committee member.

#### C. Other Related Regulatory Provisions

The CBT commented that Regulation 1.69, as originally proposed, was inconsistent with Regulations 1.41(f)<sup>9</sup> and 8.17(a)(1).<sup>10</sup> The CBT did not specify how these provisions were inconsistent with originally-proposed Regulation 1.69. While Regulation 1.69 pertains to some of the same subject matter areas covered by Regulations 1.41(f) and 8.17(a)(1), the Commission believes that proposed Regulation 1.69's requirements would not conflict with any aspect of these provisions. In fact, proposed Regulation 1.69(b)(2)(iii), which lists the types of positions that SROs must review when determining the existence of a conflict of interest, is based upon the position information which contract markets already are required to gather and to provide to the Commission upon the adoption of temporary emergency rules, pursuant to Regulation 1.41(f)(3)(ii). In the case of Regulation 8.17(a)(1), proposed Regulation 1.69 merely would clarify the requirements of that provision by enumerating what constituted a "financial, personal or other direct interest" in a disciplinary committee matter.

### III. Proposed Rulemaking

#### A. Definitions

##### 1. Self-Regulatory Organization

##### i. Application to Clearing Organizations

The Commission originally proposed to apply Regulation 1.69's conflict of interest restrictions to the governing board, disciplinary committees and oversight panels of each SRO. Originally-proposed Regulation 1.69(a)(6)'s definition of SRO included contract markets, clearing organizations and RFAs. While Section 217 of the FTPA specifies that "contract markets" must adopt conflict of interest provisions, the Commission indicated in its originally-proposed rulemaking that it believed that it would be appropriate for Regulation 1.69's conflict of interest restrictions to extend to clearing organizations and RFAs as well. The Commission particularly sought comment on the definition of SRO and whether it would be consistent with the principles endorsed by CEA Section 5a(a)(17) to extend the conflict of interest restrictions to clearing organizations and RFAs.

<sup>9</sup> Regulation 1.41(f) establishes procedures for SRO adoption of temporary emergency rules.

<sup>10</sup> Regulation 8.17(a)(1) prohibits a person from serving on a contract market disciplinary committee if "he or any person or firm with which he is affiliated has a financial, personal or other direct interest in the matter under consideration."

<sup>5</sup> For ease of reference, this release will henceforth refer to the rulemaking published on May 3, 1996, as the originally-proposed rulemaking. The release will refer to the currently-proposed rulemaking version as the proposed rulemaking.

<sup>6</sup> The governing boards of futures exchanges are legally bound not to act in "bad faith" when taking actions on behalf of an exchange. This "bad faith" standard was first articulated in *Daniel v. Board of Trade of the City of Chicago*, 164 F. 2d 815 (7th Cir. 1947), a case arising from CBT emergency actions raising the price limits on various grain futures contracts due to price volatility. The plaintiffs in that case lost money on their grain positions as a result of the CBT's actions and claimed that the CBT's Board members acted "willfully, maliciously, and for their own personal gain" in imposing emergency price limits. *Id.* at 818. In the *Daniel* case, the Court recognized that while exchange boards have a "duty" to address market emergencies, they also have a "relation to the public" which requires that they "act with the utmost objectivity, impartiality, honesty, and good faith." *Id.* at 819-20. In order to prevail in a suit challenging an emergency action, the Court determined that the plaintiff must show "bad faith amounting to fraud," since fraud would imply a board's breach of its public trust. *Id.* The "bad faith" standard governing exchange boards has been consistently followed and further refined by the Commission and the courts.

The FIA commented that it did not object to Regulation 1.69's requirements being applied to clearing organizations. The BOTCC and CFCCNY commented that CEA Section 5a(a)(17) only applies to contract markets and that, accordingly, Congress was clearly only referring to futures exchanges, not clearing organizations. The BOTCC and CFCCNY also commented that applying conflict of interest restrictions to exchanges alone would be consistent with the different natures of exchange and clearing organization actions. They stated that exchanges can take actions that are specifically designed to have a market impact and, thus, possibly affect the positions of board members (e.g., ordering liquidation trading, changing delivery dates, etc.). The BOTCC and CFCCNY contended that clearing organizations do not generally regulate trading but instead take actions to maintain the financial integrity of the clearing system and, thus, do not take actions that directly affect the positions of particular board members.

The Commission notes that, while CEA Section 5a(a)(17) applies to "contract markets," the provision also specifies that its conflict of interest restrictions shall apply to committees handling certain types of margin changes. Margin levels in the futures industry are established by both contract markets and clearing organizations. The Commission also notes that there have been previous occasions when CEA requirements for contract markets have been applied to clearing organizations. For example, Section 5a(a)(12)(A) of the CEA mandates Commission review of "contract market" rules, while Commission Regulation 1.41, which establishes procedures for Commission review of proposed rules, specifically includes clearing organizations within its definition of contract markets for these purposes. In addition, clearing organizations already are subject to regulatory requirements that are comparable to Regulation 1.69 such as Regulation 1.41(f)'s emergency action provisions and Regulation 1.63's prohibition on committee service by persons with disciplinary histories. Finally, some contract markets have in-house clearing organizations (e.g., CME and NYMEX), while other contract markets are cleared by independent clearing organizations (e.g., CBT and NYCE). Applying Regulation 1.69 to clearing organizations, as well as contract markets, would ensure that there would not be differing treatment of contract markets based on whether or not they had an in-house or

independent clearing mechanism. For these reasons, the Commission has determined that it would be appropriate to treat clearing organizations as included in the definition of "contract markets" in CEA Section 5a(a)(17) and to make clearing organizations subject to proposed Regulation 1.69.

#### ii. *Application to RFAs*

The Commission also has decided to include RFAs within the definition of SRO in order to ensure that their committees would be subject to proposed Regulation 1.69. This would reduce the potential for committee member bias and self-interest in RFA proceedings as well.<sup>11</sup>

#### 2. Governing Board

As originally proposed, Regulation 1.69's definition of governing board included any SRO "board of directors, board of governors, board of managers, or similar body" and any subcommittee thereof, such as an executive committee, that is authorized to take action on behalf of its SRO. The CBT commented that the Commission should confirm that a subcommittee of a governing board when not authorized to act on behalf of an SRO or when formulating recommendations to the board on a matter is neither a "governing board" nor an "oversight panel" under Regulation 1.69. The Commission believes that the recommendations of governing board subcommittees often are adopted in full by governing boards because the boards rely heavily on their subcommittees' recommendations. Accordingly, the Commission has revised the proposed rulemaking's definition of governing board to apply to SRO boards or board subcommittees that are authorized "to take action or to recommend the taking of action" on behalf of an SRO.

#### 3. Disciplinary Committee

As originally proposed, Regulation 1.69 defined an SRO "disciplinary committee" to mean a body that was authorized by an SRO "to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof."

#### i. *Issuing Disciplinary Charges*

The CBT commented that the Commission should confirm that Regulation 1.69's disciplinary

committee definition does not include committees that issue disciplinary charges. In fact, the Commission believes that disciplinary committee members with conflicts of interest can have a significant influence on the disciplinary process during the charging stage. Accordingly, the Commission has modified proposed Regulation 1.69 to include the issuance of disciplinary charges as one defining characteristic of a disciplinary committee.<sup>12</sup>

#### ii. *Minor Rule Violations*

The CBT, CME, FIA, NYCE and NYMEX each commented that Regulation 1.69's definition of disciplinary committee should exclude committees that deal with decorum and recordkeeping violations. The Commission agrees that the conflict of interest requirements need not apply to disciplinary committees that handle minor disciplinary matters but only to the extent that such matters are handled in a summary manner. Accordingly, the Commission has revised final Regulation 1.69(a)(1)'s definition of "disciplinary committee" to exclude committees that "summarily impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities."<sup>13</sup> This revision, which incorporates elements of Commission Regulation 8.27's summary disciplinary provision, is only intended to create an exclusion for committees that handle minor disciplinary matters where it is important to impose sanctions in a prompt manner.

#### iii. *Committees Versus Committee Members*

In its originally-proposed rulemaking release, the Commission sought particular comment on the aspect of the definition of disciplinary committee under which the conflict of interest restrictions applied to members of disciplinary committees when they deliberated and voted on matters as a body, but did not apply to members of disciplinary committees when they exercised disciplinary powers individually. Thus, the originally-proposed definition did not include persons authorized to take disciplinary actions, such as floor committee

<sup>11</sup> In its comment letter, NFA did not object to the inclusion of RFA's in the definition of an SRO. NFA did request, however, that the definition be clarified with respect to the handling of conflict of interests due to a committee member's financial interest in a significant action. As explained in Section III.B.2.i.d. below, the proposed rulemaking has been revised in this regard.

<sup>12</sup> The Commission also has proposed a conforming amendment to Regulation 1.63's definition of disciplinary committee. See Section III.E. below for a description of proposed amended Regulation 1.63.

<sup>13</sup> Insofar as such types of rule violations are not dealt with in a summary manner, they would not be excluded under the proposed definition.

members, who dispose of minor disciplinary violations by individually issuing fines or penalties, but did apply in instances when more than one committee member was required to endorse such an action. No commenter addressed this issue.

The Commission has decided to revise proposed Regulation 1.69's disciplinary committee definition so that there would be no distinction between disciplinary matters that were handled by full committees and those handled by individual committee members. Instead, as discussed above, the Commission has determined to incorporate into the definition a functional exclusion for committees that summarily impose minor penalties for decorum, attire and certain recordkeeping violations. Thus, the disciplinary committee definition would apply to any entity with disciplinary authority, whether a single person or a body of persons.

#### 4. Oversight Panel

In the originally-proposed rulemaking, the Commission defined "oversight panel" as an SRO committee authorized to "review, recommend, or establish policies or procedures with respect to the [SRO's] surveillance, compliance, rule enforcement, or disciplinary responsibilities."<sup>14</sup> The CBT and NYCE commented that this definition was too broad and should not include committees which review or recommend policies as such a definition would deter people, inside and outside of the futures industry, from serving on task forces and planning committees that formulate ideas that are helpful to the SROs.

The Commission believes that SRO policies with respect to surveillance, compliance, rule enforcement and disciplinary responsibilities are an important part of the self-regulatory process and that persons who are entrusted with such responsibilities should be free from conflicts of interests.

The CBT and NYCE suggested that the definition of oversight panel be limited to panels that establish self-regulatory policies or procedures because they are the panels that adopt measures on behalf of their SROs. Presumably, the CBT and NYCE suggested excluding panels that review or recommend such policies or procedures because their actions may only be implemented upon adoption by some other authority, such as an SRO's governing board or membership. The Commission believes,

however, that often the recommendation of an oversight panel with respect to self-regulatory policies or procedures can be tantamount to the establishment of such policies or procedures because the adopting authority relies on the panel's recommendation. Accordingly, the Commission has determined that the proposed rulemaking's definition of oversight panel should apply to SRO bodies that "recommend or establish" possible self-regulatory policies or procedures for an SRO, while excluding bodies that review such measures on behalf of their SRO.<sup>15</sup>

#### 5. Family Relationship

As further discussed below, originally-proposed Regulation 1.69 prohibited committee members from deliberating and voting on committee matters in which any member of their immediate family was a named party in interest. For these purposes, originally-proposed Regulation 1.69 defined "immediate family" to mean a person's "spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law." Although no commenters addressed the originally-proposed definition, the Commission has decided to modify the definition in two respects for this proposed rulemaking.

First, consistent with the terminology used in CEA Section 5a(a)(17), the Commission proposes to use the defined term "family relationship" instead of the originally-proposed "immediate family." Second, the Commission has decided to amend the provision substantively by defining family relationship to mean a committee member's "spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law." The Commission believes that these levels of familial relations are sufficiently close that they could unduly influence a committee member's decisionmaking. Accordingly, the proposed definition should help to assure that committee decisions would be the result of fair deliberations and would not be tainted by the real or perceived self-interest of committee members.

#### 6. Significant Actions

In the originally-proposed rulemaking, Regulation 1.69's conflict of interest restrictions were applied to SRO committees whenever they considered any "significant action which would not

be submitted to the Commission for its prior approval." The originally-proposed definition of that term included, at a minimum, two types of SRO actions: (1) SRO actions or rule changes that addressed emergencies as defined by Commission Regulation 1.41(a)(4) and (2) SRO margin changes that responded to extraordinary market conditions when such conditions were likely to have a substantial effect on prices in any contract traded or cleared at the SRO.

Proposed Regulation 1.69's definition of this term has been modified in several respects to accommodate suggestions made by commenters. In addition, for ease of reference, instead of "significant action which would not be submitted to the Commission for its prior approval," proposed Regulation 1.69 uses the defined term "significant action." The proposed "significant action" definition, though, continues to be limited to SRO actions which are not submitted to the Commission for prior approval.

##### i. Scope of Definition

Four commenters—the CBT, FIA, NYMEX and BOTCC—suggested that the significant action definition not be modified by the term "at a minimum," as originally proposed. The commenters believed that the use of this modifier deprived SROs of notice of what actions would be deemed significant and could potentially subject some committee actions to second-guessing. The Commission agrees that the inclusion of this phrase could lead to distracting collateral attacks on the actions of committees that are not subject to the conflict of interest restrictions. Accordingly, proposed Regulation 1.69(a)(8)'s definition of significant action does not include the "at a minimum" modifier.

##### ii. Nonphysical Emergency Rules

The BOTCC, CBT and FIA commented that CEA Section 5a(a)(17) requires that conflict of interest requirements apply to SRO committees when they consider "any nonphysical emergency rule," while proposed Regulation 1.69's definition included both physical and nonphysical emergency rules. These commenters urged the Commission to adhere to Congress' mandate and to limit the significant action definition to include only nonphysical emergencies. The Commission concurs with the commenters and has revised the proposed definition, which incorporates portions of Regulation 1.41(a)(4)'s definition of emergency, to include committee actions that respond to

<sup>14</sup> See originally-proposed Commission Regulation 1.3(tt).

<sup>15</sup> The oversight panel definition would be established by proposed Regulation 1.69(a)(4) and not by Regulation 1.3 as originally proposed.

nonphysical emergencies (see Regulations 1.41(a)(4)(i) through (iv) and (vi) through (viii)) and to exclude committee actions that respond to physical emergencies (see Regulation 1.41(a)(4)(v)).

### iii. Types of Margin Changes

The CME commented that Regulation 1.69's significant action definition should include margin changes that are used for regulatory purposes. In addition, the CBT, CME, FIA and NYMEX commented that, instead of margin changes that respond to market conditions that are likely to have a substantial effect on contract prices, the significant action definition should only include margin changes that are likely to have a substantial effect on contract prices. The commenters contended that their suggested approach would more closely conform with CEA Section 5a(a)(17).<sup>16</sup>

The Commission believes that the decisionmaking ability of committee members is most likely to be influenced by their personal interests when they consider actions which could impact them monetarily. Accordingly, the definition of significant action should focus on committee actions which have the most potential for affecting prices in particular contracts. Consistent with that rationale, the Commission has decided to include aspects of both of the above suggestions in its proposed rulemaking. Thus, proposed Regulation 1.69(a)(8)(ii)'s definition of an SRO significant action includes changes in margin levels that: (1) are designed to respond to extraordinary market conditions such as actual or attempted corners, squeezes, congestion, or undue concentrations of positions or (2) are likely to have a substantial effect on prices in any contract traded or cleared at the SRO.

The NYCE suggested that the Commission modify its significant action definition to pertain to margin changes that respond to price changes that are greater than some pre-established, one-day percentage market move. The Commission believes that such an approach could be an acceptable way of defining SRO committee significant actions that should be subject to Regulation 1.69's conflict of interest requirements. The Commission is not prepared, however, to establish a quantifiable industry-wide

standard as part of this proposed rulemaking. The Commission believes that it would be difficult to establish such a standard at this time given the wide variety of types of SROs and futures contracts that exist. Instead, the Commission in its proposed rulemaking has adopted a "significant action" definition that would address the requirements explicitly set forth in CEA Section 5a(a)(17), but that, at the same time, would give each SRO the flexibility to adopt implementing measures that would be sensitive to the circumstances of its particular markets.

In its originally-proposed rulemaking, the Commission sought comment on whether there were any other types of SRO actions or rule changes that should be subject to Regulation 1.69's requirement. As examples, the Commission asked whether "changes to a price quote on a price change register, setting modified closing call ranges, or establishing settlement prices" should be included in Regulation 1.69's significant action definition.<sup>17</sup> The CBT, CME and NYMEX opposed classifying price change register revisions as significant actions, while the CBT and CME similarly opposed the inclusion of the establishment of modified closing call ranges and settlement prices. Generally, the commenters felt that subjecting such actions to conflict of interest requirements would be a cumbersome burden for SRO committees that carry out these functions. Accordingly, the Commission has decided not to revise proposed Regulation 1.69's significant action definition in this regard.

## B. Self-Regulatory Organization Rules

### 1. Relationship With a Named Party in Interest

#### i. Nature of Relationship

Originally-proposed Regulation 1.69(b)(1) mandated that SROs implement rules requiring that committee members abstain from deliberating and voting on any matter in which they had a significant relationship with the matter's "named party in interest."<sup>18</sup> Originally-proposed Regulation 1.69(b)(1) listed the types of relationships between a committee member and named party in interest that required abstention, including family, employment, broker association and "significant, ongoing

business" relationships. Several commenters suggested ways in which the Commission could clarify the types of relationships that would be the grounds for an abstention.

a. *Clearing Relationships*.—The CME, FIA and NFA commented that SRO committee members should not be required to abstain from committee matters if they use the same clearing member as a matter's named party in interest. The Commission agrees that sharing a clearing member should not, by itself, influence a committee member's decisionmaking. Accordingly, proposed Regulation 1.69(b)(1)(i)(D) explicitly provides that such a relationship shall not require a committee member to abstain from a matter.

The CBT commented that relationships between a clearing firm's employees or principals and the SRO members who are cleared by the firm should not be considered a "significant, ongoing business relationship" under Regulation 1.69(b)(1). The Commission believes that two parties to such a clearing relationship may not always be totally impartial if one party is involved in considering an SRO committee action that directly bears upon the other, especially in instances where a cleared member constitutes a significant portion of a firm's clearing activity. Accordingly, the Commission has decided not to exclude such relationships from proposed Regulation 1.69(b)(1)(i).

b. *Specificity of Relationship Standard*.—The Commission also received two general comments on originally-proposed Regulation 1.69(b)(1) from the CME and NYCE. The CME stated that the provision went too far in specifying the details as to what constituted a significant relationship that required abstention. By contrast, the NYCE suggested that originally-proposed Regulation 1.69(b)(1) was not sufficiently detailed and should include an objective standard to identify disqualifying relationships based upon: (1) the length of the relationship and (2) the amount of monies that are earned by the parties as a result of the relationship.

In formulating proposed Regulation 1.69(b)(1)(i), the Commission has attempted to establish a categorical listing of the types of personal and business relations that have the potential to influence committee members unduly. SROs always would have the discretion, of course, to include any additional disqualifying criteria in their own implementing rules.

<sup>16</sup> CEA Section 5a(a)(17) states that the term "significant action that would not be submitted to the Commission for its prior approval" shall include "any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial effect [sic] on prices in any contract traded on such contract market."

<sup>17</sup> See 61 FR 19869, 19872 n. 12.

<sup>18</sup> For these purposes, originally-proposed Commission Regulation 1.69 defined a *named party in interest* as a "party who is identified as the subject of any matter being considered" by an SRO committee. This same definition has been used in this proposed rulemaking as Regulation 1.69(a)(6).

c. *Confidentiality of Proceedings.*—Under originally-proposed Regulation 1.69(b)(1), SROs were required to adopt rules prohibiting committee members from engaging in any type of deliberations or voting on matters where they had a significant relationship with the matter's named party in interest. The CBT noted that CEA Section 5a(a)(17) limits this requirement to "confidential" deliberations and voting. For this proposed rulemaking, the Commission would require that committee members abstain from any type of deliberation and voting on matters where they had a relationship with the named party in interest, whether the deliberation was confidential or non-confidential.

Theoretically, non-confidential committee meetings would permit outsiders to monitor the fairness of a committee's decisionmaking processes. The Commission does not believe, however, that it is likely that there would be an effective outside presence at such committee meetings given the SROs' traditional practice of closing committee meetings to the public. In addition, even open committee meetings would not prevent a committee member's decisionmaking from being influenced by self-interest, especially since the particulars of a committee member's personal interest in a matter might not be known to any outsiders attending committee meetings.

CEA Section 5a(a)(17) states that "at a minimum" the named party in interest conflict of interest restrictions shall apply to the "confidential deliberations and voting" of contract market governing boards, disciplinary committees and oversight panels. Because CEA Section 5a(a)(17) merely sets a minimum baseline as to the application of conflict of interest requirements, the Commission has decided to propose the more prophylactic approach of applying Regulation 1.69(b)(1)'s requirements to all deliberations, whether confidential or not. The Commission notes that this approach also is consistent with the existing conflict of interest requirements of Regulation 8.17(a)(1) which do not distinguish between confidential and non-confidential disciplinary committee proceedings.<sup>19</sup>

d. *Time Frame of Relationship.*—In addition, the Commission wishes to clarify that conflict of interest determinations under proposed Regulation 1.69(b)(1)(i) should be based upon circumstances at the time of a committee's consideration of a matter. Accordingly, if a committee member

had some significant business relationship with a matter's named party in interest prior to, but not concurrent with, his or her committee's consideration of the matter, proposed Regulation 1.69(b)(1) would not prohibit the committee member from participating.<sup>20</sup> The Commission believes that this approach is most appropriate for two reasons. First, current relationships clearly have a greater potential influence on committee members' decisionmaking than past relationships. Second, if proposed Regulation 1.69's restrictions were based on past relationships it would vastly expand the administrative burden for SRO compliance with Regulation 1.69 and, thus, potentially could compromise the ability of SRO committees to dispose of matters in an expeditious manner.

e. *Non-Disciplinary Matters.* While the Commission anticipates that proposed Regulation 1.69(b)(1)'s restrictions usually would be applied to disciplinary cases because they always would involve named respondents, the Commission notes that the provision would pertain to any matter handled by an SRO governing board, disciplinary committee or oversight panel in which there was a particular named party in interest. Accordingly, the proposed conflicts restrictions would apply, for example, to such committees whenever they reviewed a membership application or considered some regulatory action with respect to a particular individual, such as directing a person to reduce his or her position in a contract. The Commission invites comment on whether the proposed named party in interest provision should be clarified to pertain to any other type of SRO committee action. For example, should committees be subject to Regulation 1.69(b)(1) when they revise price change registers or certify the late submission of pit cards in response to requests by particular members?

#### ii. *Disclosure of Relationship*

Originally-proposed Regulation 1.69 did not explicitly require that committee members inform their SRO whether they had a relationship with a matter's named party in interest. In order to help ensure that SROs are able to enforce their Regulation 1.69-implementing rules, proposed

Regulation 1.69(b)(1)(ii) would require that SRO committee members disclose to the appropriate SRO staff whether he or she has any one of the relationships listed in Regulation 1.69(b)(1)(i) with respect to a matter's named party in interest.

#### iii. *Procedure for Determination*

a. *Sources of Information.*—Originally-proposed Regulation 1.69 did not explicitly address how SROs must enforce any rule prohibiting committee members from participating in matters where they had a relationship with the named party in interest. The CSC commented that the relationships enumerated in Regulation 1.69(b)(1), as originally proposed, would not generally be known to SRO staff when they attempted to enforce this prohibition. Accordingly, the CSC requested that the Commission clarify that SROs have no responsibility to discern relationships between committee members and named parties in interest that are not readily available from SRO records.

The Commission recognizes that SROs often do not have knowledge of all possible aspects of the relationships that may exist between a committee's members and named parties in matters being considered by the committee. Accordingly, proposed Commission Regulation 1.69(b)(1)(iii) establishes the SROs' responsibilities in this regard. Under this provision, SROs would be required, at a minimum, to base their conflict of interest determinations upon: (1) information provided by the committee members themselves (proposed Regulation 1.69(b)(1)(iii)(A)), and (2) any other source of information that was "reasonably available" to the SRO (proposed Regulation 1.69(b)(1)(iii)(B)).

Consistent with proposed Regulation 1.69(b)(1)(ii)'s requirement that committee members disclose any relationship with a matter's named party in interest, proposed Regulation 1.69(b)(1)(iii)(A) would require that SROs ascertain from each committee member whether his or her relationship with a matter's named party in interest fell into one of the "conflict of interest" categories listed in proposed Regulation 1.69(b)(1)(i) (A) through (E). Proposed Regulation 1.69 does not prescribe the manner in which SROs must gather this information from committee members. The Commission would expect SROs to engage each committee member directly in this regard, whether through oral questioning, a written questionnaire or some sort of committee member pledge, to determine any possible relationship

<sup>20</sup> In addition, the Commission would view it as an improper circumvention of proposed Regulation 1.69 if a committee member were to drop out of a broker association, as that term is defined by Commission Regulation 156.1, or end a significant, ongoing business relationship simply in order to avoid having to abstain from a committee matter.

<sup>19</sup> See footnote 10 above.

with a matter's named party in interest.<sup>21</sup>

Under proposed Regulation 1.69(b)(1)(ii)(B), SROs also would be required to consult any other source of information that was "reasonably available" to them before making a conflict of interest determination. The Commission believes that this standard appropriately accommodates the time and resource constraints that SROs often face when administering SRO committee matters.

**b. Responsibility for Determinations.**—The Commission notes that several commenters objected to originally-proposed Regulation 1.69's requirement that conflict of interest determinations be made by SRO staffs. The BOTCC and CBT commented that CEA Section 5a(a)(17) does not mandate who must make these decisions. The CSC and KCBT also contended that it may be difficult for SRO staff to direct committee members to abstain and that, accordingly, such determinations would be best made by the SRO committee involved.

Based upon these comments, the Commission has decided to revise proposed Regulation 1.69 so that it states only that SROs must make determinations as to the existence of conflicts of interest under Regulation 1.69, but does not identify any particular SRO personnel or committee that must make these determinations. This approach would enable each SRO to allocate the responsibility for these determinations as it saw fit, whether it be to SRO staff, the presiding committee, or some other party. The Commission would expect each SRO, however, to specify in its rules and procedures implementing Regulation 1.69 the person or group of persons who would have these responsibilities.

## 2. Financial Interest in a Significant Action

### i. Nature of Interest

As originally proposed, Commission Regulation 1.69 required that SRO committee members abstain from

committee deliberations and voting on certain matters in which they "knowingly [had] a direct and substantial financial interest." This restriction would have applied whenever a committee considered significant actions that would not be submitted to the Commission for its prior approval.<sup>22</sup>

In determining a committee member's financial interest in a possible committee action, originally-proposed Regulation 1.69 required SROs to review certain positions held by the member, the member's immediate family, the member's firm and the customers of the member's firm in any contract that could be affected by the committee action. With respect to a committee member's personal positions, originally-proposed Regulation 1.69 specifically required that SROs consider gross positions held in the member's personal accounts, the member's Regulation 1.3(j) controlled accounts, and any accounts in which the member had a significant financial interest. With respect to the positions of the member's immediate family, Regulation 1.69, as originally proposed, required that SROs consider gross positions held in the personal accounts or Regulation 1.3(j) controlled accounts of the member's immediate family. With respect to customer positions, the originally-proposed version of Regulation 1.69 required that SROs consider gross positions held in proprietary accounts at the committee member's firm, net positions held in customer accounts at the member's firm, and gross positions held by any customers who constituted a significant proportion of business for the member's firm.

The Commission received a wide range of comments on the originally-proposed rulemaking's provisions regarding conflicts of interest due to financial interest in a significant action. Subject to the limits mandated by CEA Section 5a(a)(17) with respect to conflict of interest requirements, the Commission has attempted to incorporate into proposed Regulation 1.69 many of the suggestions made by the commenters.

**a. Committee Member Expertise.**—The KCBT commented that under the Commission's original proposal, committee members who were actively involved with a contract on a daily basis likely would be the very same committee members who would have to abstain from participating in committee deliberations and voting on significant

actions concerning such contracts. Thus, according to the KCBT, these committee members would have no input in deciding whether a significant action was in the best interests of the contract, and consequently such decisions would be left to persons who were less familiar with the contract. The Commission recognizes that this tension is inherent in the conflict of interest requirements imposed by CEA Section 5a(a)(17) and Regulation 1.69. To the extent possible, the Commission has attempted to alleviate this concern in the proposed rulemaking by permitting otherwise conflicted committee members to deliberate on matters when they, among other things, have "unique or special expertise, knowledge or experience in the matter under consideration."<sup>23</sup>

**b. Small Exchanges.**—The KCBT also commented that nearly all committee members at small exchanges have a substantial financial interest in the exchange's primary products. Thus, under originally-proposed Regulation 1.69, a high percentage of committee members at such exchanges would be disqualified from participating in significant actions concerning such contracts. The Commission understands that the requirements of Regulation 1.69 may be difficult for small exchanges to adhere to in this regard. As discussed below, however, proposed Regulation 1.69 would provide each SRO with some flexibility in formulating its implementing rules. Moreover, the Commission believes that the potential for this problem would be greatly reduced if the exchanges ensured that their committees represented a wide diversity of membership interests, including representatives from various trading pits, consistent with the composition requirements of Regulation 1.64.

**c. Position Size.**—As noted, while Commission Regulation 1.69, as originally proposed, required that committee members abstain from deliberating and voting on significant actions when they had a "direct and substantial financial interest" in the outcome of the matter, it did not set any specific standards as to what financial interest or position size warranted a member's abstention. Instead, the Commission originally proposed that each SRO adopt its own standards in this regard as part of its implementing rules and procedures.

<sup>21</sup>The Commission believes that this approach would be consistent with some of the SRO practices already in place to enforce SRO conflict of interest requirements. In the context of disciplinary matters, for example, the CME has each of its disciplinary committee members sign a pledge each year which explains the CME's conflict of interest requirements and requires committee members to withdraw from considering any committee matter that raises a conflict of interest for them. At NYMEX, staff explains the exchange's conflict of interest restrictions before each disciplinary committee meeting and then asks whether there are any disciplinary committee members who believe they could have a conflict in any of the upcoming matters.

<sup>22</sup>The definition of such significant actions is set forth in proposed Regulation 1.69(a)(8) and is discussed above in Section III.A.6.

<sup>23</sup>See proposed Commission Regulation 1.69(b)(3)(i)(B). See also Section III.B.3. below for a discussion of the conditions under which otherwise conflicted committee members would be permitted to participate in committee matters.

The NYCE commented that Regulation 1.69 should establish some objective threshold in this area based upon the potential financial loss or gain which a committee member could incur as a result of his or her committee's possible significant action. The CBT commented that SROs should have the discretion to decide when a committee member's financial interest in a matter was direct and substantial. The CME contended that the wide disparity in sizes among the exchanges and their contracts would make it difficult for a regulation to specify a particular position size that would constitute a "direct and substantial financial interest."

At the present time, the Commission has decided not to incorporate into proposed Regulation 1.69 any numerical thresholds as to what constitutes a committee member's direct and substantial financial interest in a significant action. Instead, the SROs could include standards in their implementing rules that were appropriate to their markets. Any such criteria should be premised on, among other things, the extent to which a committee member was exposed to market risk, the size of the member's positions, whether or not the positions were market neutral and, with respect to a member's affiliated firm, the potential effect on the firm's capital. In addition, the Commission would expect each SRO to assess the magnitude and probable market impact of the underlying significant action being considered by the SRO committee.

d. *Application to RFAs*.—The NFA commented that RFAs do not consider "significant actions," as that term was defined by originally-proposed Regulation 1.69, and that, accordingly, RFAs should be excluded from Regulation 1.69's conflict of interest requirements with respect to SRO committees that handle significant actions. The Commission agrees that RFA committees do not take such significant actions and, accordingly, has revised proposed Regulation 1.69(a)(7)'s definition of SRO to exclude RFAs from the conflict of interest requirements in those instances.

## ii. *Disclosure of Interest*

Under originally-proposed Commission Regulation 1.69, whenever an SRO committee considered a significant action, each member of the committee would have been required to disclose to the SRO's staff any position information that was known or should have been known by the member with respect to the positions listed in proposed Regulation 1.69(b)(2) (*i.e.*,

positions held by the member, the member's family, the member's firm and certain customers of the member's firm). For the purposes of this provision, committee members were presumed to have knowledge with respect to certain of these positions.

a. *Presumption of Knowledge*.—The CBT, CME and FIA each commented that this presumption of knowledge provision would force a large number of committee members to abstain voluntarily from matters for fear that they would be presumed to have knowledge of position information. The CBT and CME contended that the provision should not be a part of any conflict of interest requirement because committee members who are not aware of their financial interest in a committee matter cannot be motivated by that interest. The CSC and FIA commented that the provision presumed committee member knowledge of position information that members might not know. Thus, the provision could have the consequence of creating conflicts of interest as it could force committee members to inquire about conflict-creating positions of which they otherwise would be ignorant. Each of these commenters recommended deleting the presumption of knowledge provision.

The Commission has revised proposed Regulation 1.69(b)(2)(ii) so that it does not presume committee member knowledge of any position information. Instead, a committee member would be required, under each SRO's Regulation 1.69-implementing rule, to disclose to the SRO relevant position information that was "known to him or her." A failure to disclose any such information should be considered a violation of the SRO implementing rule. This approach would be consistent with proposed Regulation 1.69(b)(2)(i), which would prohibit committee members from participating in committee decisions where they "knowingly [had] a direct and substantial financial interest in the result of the vote."

## iii. *Procedure for Determination*

As originally proposed, Commission Regulation 1.69 mandated procedures for SROs when they determined whether an SRO committee member should abstain from deliberations and voting on a significant action due to a conflict of interest. In ascertaining information relevant to a committee member's possible interest in such an action, the original proposal permitted SRO staff to rely upon:

- (1) the most recent large trader reports and clearing records available to the staff;
- (2) position information provided to the staff by the committee member; and
- (3) any other source of position information which was readily available to the staff.

a. *Review of Positions*.—The BOTCC commented that assembling all of the position information required by originally-proposed Regulation 1.69 would impose significant, time-consuming burdens on SRO staffs. The CME suggested that the information-gathering requirement be limited to information that was reasonably available to the SRO.

The BOTCC, CSC and NYMEX commented that committees which undertake significant actions must act in a swift and decisive manner. They contended that the number of categories of positions to be reviewed by SROs in applying Regulation 1.69 to committees considering significant actions would be so extensive that it would cause substantial delays and, thus, hinder an SRO's ability to respond to emergencies promptly. The CBT recommended that given that some significant actions under originally-proposed Regulation 1.69 also are temporary emergency actions under Regulation 1.41(f),<sup>24</sup> the list of positions to be reviewed under Regulation 1.69 should be modified to follow the position review criteria already required by Regulation 1.41(f)(3)(v) and, thus, avoid creating different position review burdens for

<sup>24</sup> There would be some overlap between the bases for Regulation 1.41 temporary emergency rules and the bases for proposed Regulation 1.69 significant actions. Proposed Regulation 1.69 significant actions would include temporary emergency rules which address: (1) manipulative activity (Regulation 1.41(a)(4)(i)); (2) corners, congestion or undue concentrations of positions (Regulation 1.41(a)(4)(ii)); (3) circumstances which could materially affect the performance of contracts (Regulation 1.41(a)(4)(iii)); (4) any sovereign or exchange action which could have a direct impact on trading at the contract market (Regulation 1.41(a)(4)(iv)); (5) the bankruptcy of a member or a legal action which could affect the ability of a member to perform on its contracts (Regulation 1.41(a)(4)(v)); (6) any circumstance where a member's condition jeopardizes the safety of customer funds, the contract market or the contract market's members (Regulation 1.41(a)(4)(vii)); and (7) any other unusual, unforeseeable and adverse circumstance for which it is not practicable for a contract market to submit a rule to the Commission for prior review (Regulation 1.41(a)(4)(viii)). Proposed Regulation 1.69 significant actions would diverge from Regulation 1.41 temporary emergency rules, however, by: (1) not including temporary emergency rules which address physical emergencies (Regulation 1.41(a)(4)(v)) and (2) including margin level changes which either respond to extraordinary market conditions or which are likely to have a substantial effect on contract prices.

significant actions and temporary emergency rules.<sup>25</sup>

Consistent with the CBT's suggestion, the Commission has modeled proposed Regulation 1.69(b)(2)(iii) list of positions to be reviewed for conflict of interest determinations after the list of positions that must be reviewed by exchanges when they adopt temporary emergency actions pursuant to Regulation 1.41(f)(3)(v). Accordingly, under proposed Regulation 1.69, whenever an SRO committee handled a significant action, the SRO would be required to consider the following types of positions in determining whether any of the committee's members had a direct and substantial financial interest in the matter:

- (1) gross positions at that self-regulatory organization held in each committee member's personal accounts or Regulation 1.31(j) controlled accounts (proposed Regulation 1.69(b)(2)(iii)(A));
- (2) gross positions at that self-regulatory organization held in Regulation 1.17(b)(3) proprietary accounts at each committee member's affiliated firm (proposed Regulation 1.69(b)(2)(iii)(B));
- (3) gross positions at that self-regulatory organization held in accounts in which a committee member was a Regulation 3.1(a) principal (proposed Regulation 1.69(b)(2)(iii)(C)); and
- (4) net positions at that self-regulatory organization held in Regulation 1.17(b)(2) customer accounts at each member's affiliated firm (proposed Regulation 1.69(b)(2)(iii)(D)).<sup>26</sup>

b. *Positions Outside of SRO.*—The CME commented that the list of positions to be reviewed under

originally-proposed Regulation 1.69 could be interpreted to include positions at other exchanges, in over-the-counter derivatives and in the cash market. The CME believed that it was inappropriate to require an SRO to undertake the same level of review for positions acquired outside the SRO than for positions acquired at some other SRO. The Commission has revised proposed Regulation 1.69 to address conflicts of interest based upon positions held by an SRO committee member outside of his or her SRO. First, proposed Regulation 1.69(b)(2)(i) would explicitly require committee members to abstain from deliberations and voting on significant actions if the member had a "direct and substantial financial interest" in the matter based upon "exchange or non-exchange positions that reasonably could be expected to be affected by the action."

The Commission believes that any positions held by a committee member that can be impacted by a committee action, whether or not it is held at the member's home SRO, has the potential to influence the member's views on committee matters. Given that proposed Regulation 1.69 is intended to promote fairness and integrity in the SRO committee decisionmaking process, the Commission believes that it would be appropriate to include such positions as the possible basis for a conflict of interest determination.

The Commission also is aware that SROs may not have complete knowledge of their committee members' outside financial interests. To address this situation, proposed Regulation 1.69(b)(2)(iii)(E) states that in reviewing position information in the course of a conflict of interest determination, SROs should include a review of "any other types of positions, whether maintained at that self-regulatory organization or elsewhere, that the self-regulatory organization reasonably expects could be affected by the significant action." By requiring that the SRO itself determine what positions it "reasonably expects could be affected by the significant action," the Commission believes that this provision would provide SROs with the latitude necessary to decide what "outside" financial interests of an SRO committee member to consider when making conflict of interest determinations. Each SRO's responsibilities in this regard would be further circumscribed by only having to base conflict determinations on the limited sources of information specified in proposed Regulation 1.69(b)(2)(iv).<sup>27</sup>

<sup>27</sup> In this connection, the Commission plans to have its staff determine whether it would be

#### iv. *Bases for Determination*

While the Commission in this proposed rulemaking has not modified the sources of information that SROs should consult when making conflict of interest determinations, proposed Regulation 1.69(b)(2)(iv) now provides that, when making such determinations, an SRO may take "into consideration the exigency of the significant action." The Commission believes that this modification would provide SROs with the flexibility to make conflict decisions in an expeditious manner that would not prevent SRO committees from promptly handling significant actions.<sup>28</sup>

#### 3. Participation in Deliberations

CEA Section 5a(a)(17) recognizes that in some instances a committee member with a conflict in a particular committee matter also might have special knowledge or experience regarding that matter. Accordingly, in a limited number of circumstances, originally-proposed Commission Regulation 1.69 permitted SRO committees to allow a committee member who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict to deliberate but not vote on the matter. This "deliberation exception" was only made applicable to matters in which a committee member had a "direct and substantial financial interest" in the result of a vote on a significant action. Consistent with CEA Section 5a(a)(17), originally-proposed Regulation 1.69's deliberation exception did not apply to matters in which a committee member had a conflict due to his or her relationship with a matter's named party in interest.

In determining whether to permit a "conflicted" committee member to deliberate on a matter, originally-proposed Regulation 1.69 required that the presiding committee consider a number of factors including: (1) Whether the member had special expertise in the matter involved that few or no other members of the committee had; (2) whether the committee's ability to meaningfully deliberate would be adversely affected by the member's non-participation; and (3) whether the

feasible to provide each SRO with access to position information maintained by the Commission with respect to positions held by an SRO's committee members at other SROs.

<sup>28</sup> SRO committees should not abuse this provision by delaying the consideration of significant actions in order to create exigent circumstances which would lessen the SRO's information-gathering responsibilities. The Commission would particularly evaluate the SROs' application of this provision in any rule enforcement review of Regulation 1.69-implementing rules.

<sup>25</sup> Whenever a contract market implements a temporary emergency rule, Regulation 1.41(f)(3) requires that it submit various information to the Commission with respect to the action. Among other things, the exchange must provide the Commission "a summary of any disclosure by a [board member] of his or her positions in any subject contract market, including disclosure of positions held in any personal account, controlled account, other account in which [the member] has an interest, and customer and proprietary accounts at [the member's] affiliated firm."

<sup>26</sup> There would be one minor variation between the lists of positions that must be reviewed in conflict of interest and temporary emergency rule situations. Prior to the adoption of temporary emergency rules, Regulation 1.41(f)(3)(v) requires that exchanges review "gross positions held in any \* \* \* other account [beside personal or controlled accounts] in which the governing board member has an interest." For the purposes of conflict of interest determinations, the Commission has determined, under proposed Regulation 1.69(b)(2)(iii)(C), to limit this aspect of position review to gross positions held in accounts in which a committee member is a Regulation 3.1(a) principal. Thus, the proposed provision includes positions in which committee members would probably have the greatest economic interest.

member's participation in deliberations would be necessary for the committee to obtain a quorum.<sup>29</sup>

The Commission has decided to retain a "deliberation exception" provision in this proposed rulemaking, but it has modified Regulation 1.69 to simplify the factors that should be considered in making such a determination. The Commission believes that this proposed provision strikes a balance between ensuring that SRO committees make well-informed decisions and minimizing the influence of a committee member's potential bias or self-interest in a matter. In this respect, the Commission has incorporated some of the suggestions made by several of the commenters on Regulation 1.69 as originally proposed.

#### i. Diversity of Membership Interests

The CBT and CSC suggested that the diversity of membership interests represented on a committee should be included as a factor in deciding whether to allow an otherwise conflicted committee member to participate in deliberations. The Commission recognizes that promoting the diversity of SRO committees is an important regulatory goal, as exemplified by Regulation 1.64.<sup>30</sup> The Commission believes, however, that ensuring fair and objective committees, free of the influence of self-interest, is of paramount importance. Accordingly, the Commission does not believe that it

would be beneficial to include committee diversity as a factor when making deliberation exception decisions. The Commission also does not believe that it is necessary to amend Regulation 1.64 to accommodate Regulation 1.69's conflict of interest requirements. While Regulation 1.64(b) establishes composition requirements for SRO governing boards, the provision pertains to the "regular voting members" of a board and not to the composition of a board each time that it meets. Thus, for instance, an SRO whose governing board consists of ten percent or more commercial interest directors will not be in violation of Regulation 1.64(b)(1) if, when considering any particular board matter, such directors comprise less than ten percent of the presiding directors because some or all of them are not present for any reason, including abstentions due to conflicts of interest.

#### ii. Committee Member Expertise

The CSC commented that two of the deliberation exception factors listed in originally-proposed Commission Regulation 1.69 seemed to overlap. The CSC commented that a committee with a member with special expertise in a particular subject<sup>31</sup> always would be affected adversely<sup>32</sup> if the member was required to abstain from deliberations on matters involving the subject. In response, the Commission has revised proposed Regulation 1.69(b)(3)(ii)(B) to require that committees in granting a deliberation exception must consider whether the conflicted committee member has "unique or special expertise, knowledge or experience" in the subject matter of the significant action.<sup>33</sup>

#### iii. Disclosure of Positions

The CBT, CSC and NYCE commented that under Regulation 1.69 as originally proposed a committee member with a conflict of interest could participate in deliberations on a matter without disclosing his or her positions, and concomitant biases, to the other committee members. The Commission agrees that the disclosure of a committee member's interest in a matter should help to mitigate any prejudicial influence such member's views could

have on other committee members during the course of deliberations.

Proposed Commission Regulation 1.69(b)(3)(iii) would require that, whenever an SRO committee determined whether to grant a deliberation exception to a committee member, the committee must consider all of the position information which served as the basis for the member's conflict of interest in the matter.<sup>34</sup> This requirement would serve two purposes. First, it would ensure that the committee would be fully apprised of the nature of the committee member's conflict when it made its deliberation exception determination. Second, as suggested by the CBT, CSC and NYCE, the provision also would ensure that, should a committee member with a conflict of interest be allowed to deliberate, his or her fellow committee members should be aware of the member's interest in the matter and could appropriately evaluate the views expressed by such member during deliberations.

#### iv. Public Member Approval

In order to promote a "neutral" determination, originally-proposed Regulation 1.69 required that any deliberation exception must be approved by all "public" members of the presiding committee (*i.e.*, committee members who were not members of the SRO) who were present when the committee made such a determination.<sup>35</sup>

The CBT and CME commented that requiring that deliberation exceptions be approved by each public representative on an SRO committee would have the un-democratic effect of giving a single committee member the power to veto another committee member's participation in deliberations. The two exchanges urged the Commission to delete this requirement. Based on these comments, the Commission has decided to delete the provision from proposed Regulation 1.69.

<sup>34</sup> This information would include not only the position information supplied to the SRO by the committee member (proposed Regulation 1.69(b)(2)(iv)(B)), but also position information garnered by the SRO from large trader reports and clearing records (proposed Regulation 1.69(b)(2)(iv)(A)) and any other sources reasonably available to the SRO (proposed Regulation 1.69(b)(2)(iv)(C)).

<sup>35</sup> This requirement did not apply to SRO governing boards, disciplinary committees or oversight committees which do not have public members. See Commission Regulations 1.64(b) and (c) which respectively require governing boards and disciplinary committees in certain circumstances to include non-SRO member representatives.

<sup>29</sup> The Commission, in its originally-proposed rulemaking, indicated that it believed that, given the factors that must be considered, deliberation exception determinations should be made by the committee involved, rather than SRO staff. For any particular SRO committee matter, the committee members themselves would be in a better position than SRO staff to assess their individual levels of expertise in the matter and their need for input during deliberations from the committee member who otherwise would be required to abstain. The Commission continues to adhere to this view, although no commenters on the originally-proposed rulemaking addressed this issue. Accordingly, proposed Regulation 1.69 specifically confers the responsibility for deliberation exception determinations on the SRO committee involved.

<sup>30</sup> Commission Regulation 1.64 establishes composition standards for certain types of SRO committees, including governing boards. Regulation 1.64 requires that boards meaningfully represent the following general membership interest groups: (1) futures commission merchants; (2) floor traders; (3) floor brokers; (4) participants in a variety of trading pits; and (5) other market users and participants such as banks and pension funds. In addition, Regulation 1.64 requires that at least ten percent of the regular voting members of each SRO board must consist of directors representing commercial interests such as producers, consumers, processors, distributors and merchandisers of commodities underlying the SRO's futures products, and that at least twenty percent of the regular voting members of each board must consist of non-member representatives (*i.e.*, persons who are not members of the SRO and are knowledgeable about either the futures markets or financial regulation).

<sup>31</sup> See originally-proposed Commission Regulation 1.69(b)(4)(i)(A).

<sup>32</sup> See originally-proposed Commission Regulation 1.69(b)(4)(i)(B).

<sup>33</sup> In applying this proposed provision, a conflicted committee member should not be considered to have "unique or special expertise, knowledge or experience" in a particular subject matter if the member's expertise, knowledge or experience was similar to that of some other non-conflicted member of the same committee.

#### v. Abstention Procedures

Two other commenters asked the Commission to clarify certain aspects of Regulation 1.69's deliberation exception provision. The CSC asked whether a person who was permitted to deliberate but not vote on a matter would be required to leave the committee meeting for any vote on the matter. As part of this proposed rulemaking, the Commission wishes to make clear that a committee member who was required to abstain from any committee matter due to a conflict of interest under proposed Regulation 1.69, whether it be deliberation or voting, must leave the committee meeting prior to such deliberation and/or voting. The Commission believes that even the silent presence of a committee member could influence a committee to the extent that it impeded free and open discourse among the other members of a committee.

#### vi. Public Member Conflicts of Interest

The CBT questioned whether a public representative to an SRO committee who has a possible conflict of interest could participate in determining whether he or she should receive a deliberation exception under Regulation 1.69. The Commission stresses that, under proposed Regulation 1.69, an SRO committee member, whether public or non-public, could not participate in any committee vote on whether he or she should abstain from voting and/or deliberating on a matter due to a conflict of interest.

#### vii. Public Interest

The Commission emphasizes that proposed Regulation 1.69(b)(3)(ii)'s list of circumstances would merely be the factors to be considered by SROs when making deliberation exception decisions and the presence or absence of any one factor should not be dispositive in making such decisions. Consistent with CEA Section 5a(a)(17)(c), SROs ultimately could only permit committee members with conflicts to participate in deliberations if it would be "consistent with the public interest."

#### 4. Documentation of Determination

Whenever an SRO made a conflict of interest determination, originally-proposed Regulation 1.69 required the SRO committee considering the underlying substantive matter to include certain information regarding the determination in the minutes of its meeting. Such a record was required to indicate: (1) the committee members who attended the meeting, (2) the staff member(s) who reviewed the committee members' positions, (3) a listing of the

position information reviewed for each committee member, (4) the names of any committee members directed to abstain and the reasons therefor, (5) a description of the procedures followed by the SRO in making an abstention decision, and (6) in those instances when a committee member was granted a deliberation exception, a full description of the views expressed by the member during the committee's deliberations.

#### i. Documenting Position Information

Several commenters responded to the original proposal's documentation requirements. The CBT and CME suggested that the provision be modified to make clear that confidential information, such as position information, need not be disclosed in a committee meeting's minutes. The Commission has revised proposed Regulation 1.69(b)(4) to require that SRO committees "reflect in their minutes or otherwise document" their conflict of interest determinations. With this approach, SRO committees would not be required to disclose position information in their minutes. However, they would have to document any position information and any other information relied upon in making a conflict of interest determination and would be required to retain such information in a manner consistent with Commission Regulation 1.31.

#### ii. Views of Conflicted Members

The CBT commented that the originally-proposed requirement that committee minutes reflect the views expressed by "conflicted" members who were granted deliberation exceptions was counterproductive and would inhibit such members from candidly expressing their opinions and sharing their expertise. The Commission disagrees. The recordation of such committee members' views should help to deter them from offering strictly self-interested opinions to their fellow committee members. The Commission notes, however, that it has attempted to reduce the burden of this provision in this proposed rulemaking by requiring that SROs record only "a general description of the views expressed by such member during deliberations." See proposed Commission Regulation 1.69(b)(4)(iv) (emphasis added).

#### iii. Determination Procedures

The CME commented that a description of the procedures used in making a conflict of interest determination should only have to be included in a committee's minutes when the procedures vary from the

SRO's normal procedures. The Commission has decided to delete this provision in its entirety from proposed Regulation 1.69.

#### iv. Relationship With Named Party in Interest

The Commission stresses that, while many of proposed Regulation 1.69(b)(4)'s requirements would apply only to conflicts of interest where a committee member had a "direct and substantial financial interest" in a significant action, the provision also would pertain to conflicts due to a member's relationship with a matter's named party in interest. Accordingly, in named party in interest conflicts, the presiding committee would be required to record: (1) the names of committee members who participated in deliberation and voting on a matter in which a member abstained due to a conflict of interest (proposed Regulation 1.69(b)(4)(i)) and (2) the names of any committee members who recused themselves voluntarily or who were required to abstain due to a conflict of interest (proposed Regulation 1.69(b)(4)(ii)). The documentation requirements of proposed Regulation 1.69(b)(4) (i) and (ii) would only be appropriate for financial interest conflicts of interests and would not be applicable to named party in interest conflicts.

#### C. Violations of SRO Rules

Originally-proposed Commission Regulation 1.69(d) made it a violation of Regulation 1.69 for an SRO to permit a committee member to participate in deliberations or voting on a matter if such participation violated any SRO rule implementing the conflict of interest restrictions of Commission Regulation 1.69.

The CBT commented that this provision would not increase any SRO's incentive to comply with Regulation 1.69's standards and that, accordingly, the benefits of the provision did not justify the costs to the Commission of enforcing the provision. The FIA commented that the requirement was redundant and only gave the impression that SROs cannot be entrusted to regulate their own affairs. Both the CBT and FIA recommended that the provision be deleted.

The Commission has decided not to include this provision in proposed Regulation 1.69. The Commission reminds the SROs, however, that they would have the responsibility, under Section 5a(a)(8) of the CEA, to enforce any "bylaws, rules, regulations, and resolutions" implementing proposed Regulation 1.69. The Commission

believes that it would be able to monitor adequately the SROs' enforcement of their implementing rules in the ordinary course of its rule enforcement review program.

#### *D. Liability to Other Parties*

As originally proposed, Commission Regulation 1.69(e) protected SROs, SRO officials and SRO staffs involved in reviewing committee member positions and making abstention decisions, pursuant to Regulation 1.69, from liability for such actions to any party other than the Commission. The CBT, CSC and FIA each suggested that the Commission revise the wording of this provision so that it more closely conformed with the wording of CEA Section 5a(a)(17). Rather than proposing a regulatory provision in addition to the statutory provision in this regard, the Commission has decided to delete this provision from this proposed rulemaking. The Commission believes that this approach would eliminate any confusion between Regulation 1.69 and CEA Section 5a(a)(17).

#### *E. Amendments to Other Commission Regulations Made Necessary by Final Commission Regulation 1.69*

Section 213 of the FTPA amended Section 5a(a)(12)(B) of the CEA to require that the Commission issue regulations establishing "terms and conditions" under which contract markets may take temporary emergency actions without prior Commission approval. Section 5a(a)(12)(B) and Regulation 1.41(f), the Commission's implementing regulation, require that any such temporary emergency action be adopted by a two-thirds vote of a contract market's governing board. In recognition of the fact that governing board members may be required to abstain from deliberations and voting on such actions under contract market rules implementing Regulation 1.69, the Commission, as part of its conflict of interest rulemaking, originally proposed to amend Regulation 1.41(f) to provide that such abstaining board members not be included in determining whether a temporary emergency action has been approved by a two-thirds majority of a governing board.

The CBT in its comment letter requested that the Commission confirm that SROs would be able to include governing board members who abstain from voting on temporary emergency rules, pursuant to a Regulation 1.69-implementing rule, in determining whether the board has a quorum of members necessary for it to conclude business. In this proposed rulemaking, the Commission would revise

Regulation 1.41(f)(10) to provide that such abstaining members may be included for quorum purposes.

As indicated in Section III.A.3. above, the Commission also has proposed to revise Commission Regulation 1.63's definition of disciplinary committee so that, like proposed Regulation 1.69's definition of the same term, it would include the issuance of disciplinary charges as a defining characteristic.<sup>36</sup> Regulation 1.63's disciplinary committee definition would include all committees and persons with disciplinary authority and, unlike proposed Regulation 1.69, would not exclude persons who summarily impose penalties for minor rule violations.

#### *F. Conclusion*

The Commission believes that proposed Regulation 1.69 and the proposed amendments to Regulations 1.41 and 1.63 would meet the statutory directives of Section 5a(a)(17) of the CEA as it was amended by Section 217 of the FTPA. The proposed rulemaking would establish guidelines and factors to be considered in determining whether an SRO committee member was subject to a conflict of interest which could potentially restrict his or her ability to make fair and impartial decisions in a matter and, thus, warranted abstention from participation in committee deliberations and voting.

### **IV. Related Matters**

#### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act. 47 FR 18618, 18619 (April 30, 1982). Furthermore, the then Chairman of the Commission previously has certified on behalf of the Commission that comparable rules affecting clearing organizations and registered futures associations did not have a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986).

This proposed rulemaking would affect individuals who served on SRO governing boards, disciplinary committees and oversight panels. The Commission believes that this proposed rulemaking would not have a significant economic impact on these SRO

committee members. This proposed rulemaking would require these committee members to disclose to their SROs certain information which was known to them at the time that their committees considered certain types of matters. The Commission believes that this requirement would not have any significant economic impact on such members because the information which they would be required to provide should be readily available to them.

Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the action proposed to be taken herein would not have a significant economic impact on a substantial number of small entities.

#### *B. Agency Information Activities*

When publishing proposed rules, the Paperwork Reduction Act of 1995 ("PRA") (Pub. L. 104-13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission, through this rule proposal, solicits comments to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget ("OMB"). The burden associated with this entire collection (3038-0022), including this proposed rule, is as follows:

Average burden hours per response—  
3,547.01  
Number of respondents—11,011.00  
Frequency of response—On Occasion

<sup>36</sup> Regulation 1.63 requires that persons with certain disciplinary histories be disqualified from serving on, among other things, SRO disciplinary committees.

The burden associated with this specific proposed rule is as follows:  
Average burden hours per response—2.00

Number of respondents—20

Frequency of response—On Occasion

Persons wishing to comment on the information required by this proposed rule should contact the Desk Officer, Commodity Futures Trading Commission, OMB, Room 10201, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from the Commission Clearance Office, 1155 21st Street NW, Washington, DC 20581, (202) 418-5160.

#### List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission is proposing to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 would continue to read as follows:

**Authority:** 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41(f)(10) would be proposed to be added to read as follows:

#### § 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

\* \* \* \* \*

(f) \* \* \*

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69 shall not be counted in determining whether such a rule was approved by the two-thirds vote required by this section. Such members can be counted for the purpose of determining whether a quorum exists.

\* \* \* \* \*

3. Section 1.63(a)(2) would be proposed to be revised to read as follows:

#### § 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) \* \* \*

(2) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof.

\* \* \* \* \*

4. Section 1.69 would be proposed to be added to read as follows:

#### § 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) *Definitions.* For purposes of this section:

(1) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those cases where a single person is authorized to summarily impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) A person's *family relationship* means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act, to take action or to recommend the taking of action on behalf of the self-regulatory organization.

(4) *Oversight panel* means any panel, or any subcommittee thereof, authorized by a self-regulatory organization to recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement, or disciplinary responsibilities.

(5) *Member's affiliated firm* is a firm in which the member is a "principal," as defined in § 3.1(a), or an employee.

(6) *Named party in interest* means a party who is the subject of any matter being considered by a governing board,

disciplinary committee, or oversight panel.

(7) *Self-regulatory organization* means a "self-regulatory organization" as defined in § 1.3(ee) and includes a "clearing organization" as defined in § 1.3(d), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

(8) *Significant action* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an "emergency" as defined in § 1.41(a)(4) (i) through (iv) and (vi) through (viii); and

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) *Self-regulatory organization rules.* Each self-regulatory organization shall maintain in effect rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) *Relationship with named party in interest.*—(i) *Nature of relationship.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) Is the named party in interest;

(B) Is an employer, employee, or fellow employee of the named party in interest;

(C) Is associated with the named party in interest through a "broker association" as defined in § 156.1;

(D) Has any other significant, ongoing business relationship with the named party in interest, not including relationships limited to executing futures or option transactions opposite each other or to clearing futures or option transactions through the same clearing member; or

(E) Has a family relationship with the named party in interest.

(ii) *Disclosure of relationship.* Prior to the consideration of any matter involving a named party in interest, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff whether he or she has one of the relationships listed in paragraph (b)(1)(i) of this section with the named party in interest.

(iii) *Procedure for determination.* Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Such determinations shall be based upon:

(A) Information provided by the member pursuant to paragraph (b)(1)(ii) of this section; and

(B) Any other source of information that is reasonably available to the self-regulatory organization.

(2) *Financial interest in a significant action*—(i) *Nature of interest.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that reasonably could be expected to be affected by the action.

(ii) *Disclosure of interest.* Prior to the consideration of any significant action, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff the position information referred to in paragraph (b)(2)(iii) of this section that is known to him or her.

(iii) *Procedure for determination.* Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) Gross positions held at that self-regulatory organization in the member's personal accounts or "controlled accounts," as defined in § 1.3(j);

(B) Gross positions held at that self-regulatory organization in proprietary

accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(C) Gross positions held at that self-regulatory organization in accounts in which the member is a principal, as defined in § 3.1(a);

(D) Net positions held at that self-regulatory organization in "customer" accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and

(E) Any other types of positions, whether maintained at that self-regulatory organization or elsewhere, that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) *Bases for determination.* Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) The most recent large trader reports and clearing records available to the self-regulatory organization;

(B) Position information provided by the member pursuant to paragraph (b)(2)(ii) of this section; and

(C) Any other source of information that is reasonably available to the self-regulatory organization.

(3) *Participation in deliberations.* (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain pursuant to paragraph (b)(2) of this section if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body should consider the following factors:

(A) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) Whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) *Documentation of determination.* Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their

minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated;

(iii) Information on the position information that was reviewed for each member; and

(iv) In those instances when a committee member who otherwise would be required to abstain from deliberating and voting on a matter is permitted to deliberate on a significant action, a general description of the views expressed by such member during deliberations.

Issued in Washington, D.C. on January 16, 1998, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 98-1619 Filed 1-22-98; 8:45 am]

BILLING CODE 6351-01-P

## INTERNATIONAL TRADE COMMISSION

### 19 CFR Parts 201 and 207

#### Proposed Amendments to Rules of Practice and Procedure; Hearing Regarding Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Proposed rule; notice of public hearing.

**SUMMARY:** On October 23, 1997, the Commission published proposed rules to establish procedures for the conduct of five-year reviews of antidumping and countervailing duty orders and suspension agreements (62 FR 55185). The notice of proposed rulemaking indicated that the Commission would hold a hearing concerning the procedural matters discussed in the notice of proposed rulemaking as well as methodological and analytical issues relating to five-year reviews. The hearing will include panel discussions on topics of significant interest. Interested persons with similar viewpoints are encouraged to consolidate testimony. After reviewing the requests, the Commission will notify participants of panel assignments and time allocations. The Commission will

accommodate as many requests to participate as time permits. For further information concerning hearing procedures and rules of general application, consult Part 201 of the Commission's Rules of Practice and Procedure (19 CFR part 201).

**DATES:** The hearing will be held on February 26, 1998, beginning at 9:30 a.m. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission no later than ten (10) days after the date of publication of this document and should identify the specific topics the requestor wishes to discuss.

**ADDRESSES:** The hearing will be held at the U.S. International Trade Commission Building at 500 E Street, SW, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

Issued: January 20, 1998.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98-1741 Filed 1-22-98; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### 22 CFR Part 228

RIN 0412-AA37

#### Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID: Miscellaneous Amendments

**AGENCY:** United States Agency for International Development (USAID), IDCA.

**ACTION:** Proposed rule.

**SUMMARY:** USAID proposes to amend its regulation on source, origin and nationality for commodities and services financed by USAID by revising two rules, one on system determinations for commodities and one on ocean

transportation eligibility, and clarifying waiver provisions.

The proposal to amend the coverage on systems determinations would allow components of a commodity system to be shipped to a cooperating country without first being shipped to and assembled in an eligible country. This should reduce the cost of these transactions by reducing unnecessary shipments. The proposal to amend the rules on eligibility of transshipments would require that suppliers obtain a determination from USAID that direct service on a U.S. flag vessel is not available before transshipment from a U.S. flag to a non-U.S. flag vessel would be eligible for USAID financing. This will ensure compliance with Cargo Preference requirements that direct U.S. flag service be used when available.

**DATES:** Comments are due March 24, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen O'Hara, Office of Procurement, Policy Division (M/OP/P) USAID, Washington, DC 20523-1435. Telephone: (703) 875-1534, facsimile: (703) 875-1243, e-mail address: [kohara@usaid.gov](mailto:kohara@usaid.gov).

**SUPPLEMENTARY INFORMATION:** The regulation at 22 CFR part 228 was published as a final rule September 15, 1996 (61 FR 53615). After operating under the regulation for a year a few areas have been identified that need some additional coverage or clarification. In Section 228.11, USAID proposes to amend the current provision which allows some commodity transactions to be designated as systems and thus be considered a single commodity rather than a number of separate commodities (e.g., a computer system with CPU, monitor and keyboard). Under the current rule, a commodity must be produced in a country included in the authorized Geographic Code prior to shipment to the cooperating country in order to meet eligibility requirements, and the same rule currently applies to a system. It can add considerable expense to a transaction if some components of a system must be shipped to a country in the authorized Geographic Code to be assembled into a system prior to shipment to the cooperating country in order to meet USAID's origin requirement. In many cases where systems determinations are appropriate there is no practical need to assemble the system prior to final installation in the cooperating country. Thus, the proposed rule would allow a system to meet the origin requirement without prior assembly in a country included in the authorized Geographic Code

provided the supplier is responsible for assembly in the cooperating country.

The ocean transportation rule in 228.21 is being amended to ensure compliance with cargo preference requirements by limiting the use of transshipments which begin on U.S. flag vessels and move to non-U.S. flag vessels to only those cases where direct carriage on U.S. flag vessels is not available. The proposed rule will require the supplier to obtain a determination from USAID that direct service on a U.S. flag vessel to destination is not available before a U.S.-foreign flag transshipment will be eligible for USAID financing. In addition, section 228.21 is revised to specify where USAID's policies implementing cargo preference are located.

Editorial clarifications are being made to the waiver provisions in Sections 228.51 and 228.53.

#### List of Subjects in 22 CFR Part 228

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly 22 CFR part 228 is proposed to be amended as follows:

#### PART 228—[AMENDED]

1. The authority citation continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

2. In § 228.11, paragraph (e) is revised as follows:

#### § 228.11 Source and origin of commodities.

\* \* \* \* \*

(e) Systems Determination. When a system consisting of more than one produced commodity is procured as a single, separately priced item, USAID may determine that the system itself shall be considered a produced commodity. When a determination is made to treat a system as a produced commodity, component commodities which originate from other than an authorized source country may be shipped directly to, and the system assembled in, the cooperating country, unless USAID specifically determines that assembly and shipment shall take place in an authorized source country. Transportation costs must still meet the requirements in subpart C of this part in order for them to be eligible for USAID financing. USAID, or the importer in the case of a Commodity Import Program, shall inform the supplier of any system determination.

\* \* \* \* \*

3. Section 228.21 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (c)(4) as follows:

**§ 228.21 Ocean transportation.**

(a) \* \* \* USAID's policy on implementation of the Cargo Preference Act is in USAID's Automated Directives System, Chapter 315.

\* \* \* \* \*

(c) \* \* \*

(4) USAID will finance costs incurred on vessels under flag registry of any Geographic Code 935 country if the costs are part of the total cost on a through bill of lading that is paid to a carrier for initial carriage on a vessel which is eligible in accordance with paragraphs (c)(1), (2) or (3) of this section; *provided that* for shipments originating on a U.S. flag vessel with transshipment to a non-US. flag vessel, the supplier must obtain a determination that direct service on a U.S. flag vessel is not available from USAID's Office of Procurement, Transportation Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523-7900.

4. Section 228.51, paragraph (a) is amended by revising the introductory paragraph and paragraph (a)(1) as follows:

**§ 228.51 Commodities.**

(a) *Waiver criteria.* Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (a) (2) or (3) of this section may only be authorized on a case-by-case basis. A waiver may be authorized when:

(1) A commodity required for assistance is of a type that is not produced in or available for purchase in the United States; in addition, for waivers to any country or Geographic code beyond Code 941 and the cooperating country, the commodity is of a type that is not produced in or available for purchase in any country in Code 941 or the cooperating country.

\* \* \* \* \*

5. Section 228.53 is amended by revising the introductory paragraph and paragraph (a) as follows:

**§ 228.53 Suppliers of services—privately owned commercial suppliers and non-profit organizations.**

*Waiver criteria.* Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (b) or (c) of this section may only be authorized on

a case-by-case basis. A waiver may be authorized when:

(a) Services required for assistance are of a type that are not available for purchase in the United States; in addition, for waivers to any country or Geographic Code beyond Code 941 and the cooperating country, the services are of a type that are not available for purchase in any country in Code 941 or the cooperating country.

\* \* \* \* \*

Dated: January 5, 1998.

**Marcus L. Stevenson,**  
*Procurement Executive.*

[FR Doc. 98-1572 Filed 1-22-98; 8:45 am]

BILLING CODE 6116-71-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-243-FOR]

#### Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (hereinafter the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Ohio rules pertaining to permitting requirements, bond release, and performance standards. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., [E.D.T.], February 23, 1998. If requested, a public hearing on the proposed amendment will be held on February 17, 1998. Requests to speak at the hearing must be received by 4:00 p.m., [E.D.T.], on February 9, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours,

Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief,  
Appalachian Regional Coordinating  
Center, Office of Surface Mining  
Reclamation and Enforcement, 3  
Parkway Center, Pittsburgh, PA  
15220, Telephone: (412) 937-2153.  
Ohio Division of Mines and  
Reclamation, 1855 Fountain Square  
Court, Columbus, Ohio 43224,  
Telephone: (614) 265-1076.

**FOR FURTHER INFORMATION CONTACT:**

George Rieger, Field Branch Chief,  
Appalachian Regional Coordinating  
Center, Telephone: (412) 937-2153.

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (42 FR 34688). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

#### II. Description of the Proposed Amendment

By letter dated December 30, 1997 (Administrative Record No. OH-2174-05), Ohio submitted a proposed amendment to its program pursuant to SMCRA and in accordance with 30 CFR 732.17(c). The provisions of the Ohio Administrative Code (OAC) that Ohio proposed to amend are: OAC 1501:13-4-05—Permit Application Requirements, OAC 1501:13-4-12—Special Categories of Mining, OAC 1501:13-4-14—Underground Permit Application Requirements, OAC 1501:13-7-05—Release of Performance Bond, and OAC 1501:13-9-04—Performance Standards.

Specifically, Ohio is proposing the following changes. At OAC 1501:13-4-05 and 13-4-14, Ohio is proposing to replace the term "sedimentation pond" with "siltation structure" and to reference the dam classification criteria found in the Natural Resources Conservation Service (NRCS) Technical Release No. 60. AT OAC 1501:13-4-12(E), Ohio is proposing to restrict approximate original contour restoration variances to only steep-slope mining and reclamation operations. At 13-4-12(F)(4)(E), Ohio is proposing to require

that the aggregate total prime farmland acreage not be decreased from that which existed prior to mining. Any water bodies to be constructed during mining and reclamation operations are to be located within the post-reclamation non-prime farmland portions of the permit area. At OAC 1501:13-7-05(A)(2)(a)(iv), Ohio is proposing to require that a notarized statement by the permittee affirming completion of all applicable reclamation requirements be included in a request of approval of reclamation. At OAC 1501:13-9-4, Ohio is proposing to reference the dam and/or emergency spillway hydrologic criteria found in the NRCS Technical Release No. 60. Ohio is also proposing to delete the spillway requirements for impoundments at section (G)(3)(b) as they already appear at section (H)(1)(h).

#### *Public Comment Procedures*

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

#### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### *Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on February 9, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish

to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### **IV. Procedural Determinations**

#### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program

provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3509 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### **List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1998.

**Ronald C. Rector,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 98-1651 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-05-M

### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 943**

[SPATS No. TX-039-FOR]

#### **Texas Abandoned Mine Land Reclamation Plan**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; correction.

**SUMMARY:** OSM is correcting a proposed rule that appeared in the **Federal Register** of December 29, 1997 (62 FR 67592). This document announced receipt of a proposed amendment to the Texas abandoned mine land reclamation plan (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1997 (SMCRA).

**FOR FURTHER INFORMATION CONTACT:**

Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

In **Federal Register** document 97-33662 beginning on page 67592 in the issue of Monday, December 29, 1997, make the following corrections:

1. On page 67593 in the first column under the heading **SUMMARY**, "acquire" in line 24 should be "acquired."

2. On page 67593 in the first column under the heading **ADDRESSES**, "Texas" in line five of the third paragraph should be "Oklahoma."

3. On page 67593 in the second column under number 1.a. in line two, "Sec. 12.805" should be "Sec. 12.805."

4. On page 67594 in the first column, in line three, the "p" in "paragraph" should be capitalized.

5. On page 67594 in the first column, in line 17, the "i" in "it" should be capitalized.

6. On page 67594 in the third column under number 17 in line 5 of the paragraph, the "c" in "commission" should be capitalized.

7. On page 67595 in the first column in the heading of number 22, "Section 21.820" should be "Section 12.820."

8. On page 67595 in the first column in the paragraph under the heading "Public Hearing," the word "INFORMAITON" in line three should be "INFORMATION."

**List of Subjects in 30 CFR Part 904**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1998.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 98-1652 Filed 1-22-98; 8:45 am]

**BILLING CODE 4310-05-M**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[AD-FRL-5951-5]

**Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On December 19, 1995, EPA adopted emission guidelines for existing municipal waste combustor (MWC) units. Section 129 of the Act requires States with existing MWC units subject to the guidelines to submit plans to EPA that implement and enforce the emission guidelines. The State plans were due on December 19, 1996. States without MWC units subject to the emission guidelines must submit a negative declaration letter. Following receipt of a State plan, EPA has up to 6 months to approve or disapprove the plan. If a State with existing MWC units does not submit an approvable plan within 2 years after promulgation of the guidelines (i.e., December 19, 1997), the Clean Air Act (ACT) requires EPA to develop, implement, and enforce a Federal plan for MWC units in that State. In this action EPA proposes a Federal plan to implement emission guidelines for MWC units located in States where State plans have not been approved. For most of these States, the Federal plan would be an interim action because when a State plan is approved, the Federal plan will no longer apply to MWC units covered by the State plan. This proposed MWC Federal plan includes the same required elements as a State plan as specified in 40 CFR part 60, subpart B. These elements are: identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emission inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports. Also discussed in this preamble is Federal plan implementation and delegation of authority.

**DATES:** *Comments.* Comments on this proposal must be received on or before March 24, 1998.

*Public Hearing.* A public hearing will be held in Washington, DC if individuals request to speak. In addition, a public hearing will be held in any State with an MWC unit that would be covered by the proposed

MWC Federal plan, if individuals request to speak. Requests to speak must be received by February 23, 1998. If requests to speak are received, one or more public hearings will be held. A message regarding the date and location of the public hearing(s) may be accessed by calling (919) 541-5339 after February 23, 1998.

**ADDRESSES:** *Comments.* Comments on this proposal should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC-6102), Attention Docket No. A-97-45, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments and data may be filed electronically by following the instructions in section I of **SUPPLEMENTARY INFORMATION** of this preamble.

*Public Hearing.* If timely requests to speak at a public hearing are received, a public hearing will be held in Washington, DC or in any State with an MWC unit that would be covered by the proposed MWC Federal plan. Persons wishing to present oral testimony should notify Ms. Julie Andresen, Program Review Group, Information Transfer and Program Integration Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5339 at EPA. A message regarding the date and location of the public hearing(s) may be accessed by calling (919) 541-5339.

*Docket.* Docket numbers A-89-08, A-90-45, and A-97-45 contain the supporting information for this proposed rule and the supporting information for EPA's promulgation of emission guidelines for existing MWC units. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this proposal, contact Ms. Julie Andresen at (919) 541-5339, Program Review Group, Information Transfer and Program Integration Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information, contact Mr. Walt Stevenson at (919) 541-5264, Combustion Group, Emission Standards Division (MD-13), U.S.

Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 2) as shown in section I of Supplementary Information.

#### SUPPLEMENTARY INFORMATION:

### I. Background of MWC Regulations and Affected Facilities

#### A. Background of MWC Regulations

On February 11, 1991 (56 FR 5488), EPA promulgated in the **Federal Register** emission guidelines for existing MWC units (40 CFR part 60, subpart Ca) under authority of section 111 of the Act as amended in 1977. On September 20, 1994, EPA proposed revised emission guidelines for MWC units (40 CFR part 60, subpart Cb) under sections 111 and 129 of the Act as amended in 1990. On December 19, 1995, EPA issued final emission guidelines applicable to small and large categories of MWC units.<sup>1</sup> See 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subpart Cb as it applies to MWC units with an individual capacity to combust less than or equal to 250 tons per day of municipal solid waste (MSW) (small MWC units), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subpart Cb applies only to MWC units with an individual capacity to combust more than 250 tons per day of MSW per unit (large MWC units). On August 25, 1997 EPA published changes to the emission guidelines to address the court decision (62 FR 45116). Those changes went into effect on October 24, 1997.

States with existing large MWC units subject to the emission guidelines were required to submit to EPA a plan that implements and enforces the guidelines within 1 year after promulgation of the guidelines, or by December 19, 1996. The court's order that vacated the applicability of the guidelines to small MWC units and cement kilns did not affect the due date or the required content of State plans for large MWC units. The State plans due date remained December 19, 1996. Section 129(b)(3) of the Act requires EPA to

develop, implement, and enforce a Federal plan for large units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 19, 1997. This action proposes a Federal plan for MWC units that are not covered by a State plan. The elements of the Federal plan are summarized in section II of this preamble.

#### B. MWC Federal Plan and Affected Facilities

This proposed MWC Federal plan would affect all MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units) that commenced construction on or before September 20, 1994 that are located in: (1) Any State for which a State plan has not been approved; (2) any State whose State plan has been approved and subsequently vacated in whole or in part; or (3) any State with an approved State plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the State plan is no longer as protective as the emission guidelines. The specific applicability of this plan is described in §§ 62.14100 and 62.14102 of subpart FFF.

This proposed MWC Federal plan would not affect an MWC unit covered by an EPA approved State plan. If a State submits a State plan and that State plan is approved before promulgation of the Federal plan, the promulgated MWC Federal plan would not apply to MWC units covered by that State plan. Furthermore, promulgation of this MWC Federal plan does not preclude a State from submitting a State plan later. If a State submits a State plan after promulgation of the MWC Federal plan, EPA will review and approve or disapprove the plan. Upon approval of the State plan, the Federal plan would no longer apply. The EPA will periodically amend the exclusion table in § 62.14102 of subpart FFF to identify MWC units covered in the approved State plan that are excluded from Federal plan applicability. (See the discussion in *State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan—Full Transfer of Authority Through State Plan Approval* in section VI of this preamble.) States are, therefore, encouraged to continue their efforts to develop and submit State plans to EPA for approval.

To clarify which MWC units would and would not be covered, this proposed Federal plan lists in the

exclusion table in § 62.14102 of subpart FFF those units, by State, to which the MWC Federal plan would not apply. Only the MWC units listed in that table are excluded from the proposed Federal plan. Large MWC units not listed in the exclusion table would be covered by the Federal plan. For example, if a large MWC is located in a State and the large unit is not either specifically listed in the applicability section of the State plan or covered by a general applicability clause in the State plan, the large MWC unit would be subject to the Federal plan. Also, large MWC units overlooked by a State that submitted a negative declaration letter would be subject to the Federal plan. As stated above, EPA expects additional State plans to be approved prior to promulgation of this rule. The promulgated Federal plan would list in the exclusion table, those additional units in States in which an approved State plan applies.

#### C. Status of State Plan Submittals

Many States are making significant progress on their State plans and EPA expects many State plans to be submitted in the next few months. Table 1 summarizes the status of State plans and negative declarations. The table is based on information from Regional Offices (A-97-45, II-I-5). The status of State plan submittals as of December 19, 1997 is as follows:

- The EPA has approved the State plans for Oregon and Florida and the MWC units covered in those State plans would not be covered by the proposed MWC Federal plan (The EPA has reviewed and approved the State plan for Illinois. However, the **Federal Register** notice approving the plan has not been published. Therefore, the approval of the Illinois State plan is not reflected elsewhere in this proposal.);
- The EPA has received a negative declaration letter from States listed in section I of table 1 stating that there are no large MWC units in these States; thus EPA is not expecting a State plan to be submitted from these States. However, in the unlikely event that large MWC units are subsequently identified in any of these States, this Federal plan would automatically apply to them;
- The EPA has received a State plan from States listed in section II of table 1 and the State plans currently are being reviewed by EPA. The proposed Federal plan would cover large MWC units in these States, but if these State plans are approved, the promulgated Federal plan would not cover units addressed in the approved State plans.
- The EPA has not received a State plan or a negative declaration letter from the States listed in section III of table 1. The large MWC units in these States would be subject to the proposed MWC Federal plan until a State plan applicable to large MWC units is approved by EPA.

<sup>1</sup> The small category comprised all MWC units located at facilities with total capacity to combust between 35 mg/day (40 tons per day), and 225 mg/day (250 tons per day) of MSW. The large category comprised all MWC units located at facilities with total capacity to combust greater than 250 tons per day of MSW.

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN <sup>a</sup>

State	Status <sup>b</sup>
<b>I. Negative declaration submitted to EPA</b>	
Region I:	
Rhode Island .....	A
Vermont .....	A
Region II:	
Puerto Rico .....	A
Virgin Islands .....	A
Region III:	
Delaware .....	A
District of Columbia .....	A
West Virginia .....	A
Region IV:	
Kentucky .....	A
Mississippi .....	A
North Carolina .....	A
Region V:	
Wisconsin .....	A
Region VI:	
Arkansas .....	A
Louisiana .....	A
New Mexico .....	A
Texas .....	A
Region VII:	
Iowa .....	A
Kansas .....	A
Missouri .....	A
Nebraska .....	A
Region VIII:	
Colorado .....	A
Montana .....	A
North Dakota .....	A
South Dakota .....	A
Utah .....	A
Wyoming .....	A
Region IX:	
Arizona .....	A
Nevada .....	A
Region X:	
Alaska .....	A
Idaho .....	A
<b>II. State plan submitted to EPA</b>	
Region II:	
New York .....	B

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN <sup>a</sup>—Continued

State	Status <sup>b</sup>
Region III:	
Maryland .....	B
Region IV:	
Georgia .....	B
Tennessee .....	B
Region V:	
Illinois .....	B
<b>III. State plan or negative declaration not submitted to EPA</b>	
Region I:	
Connecticut .....	C
New Hampshire .....	C
Maine .....	C
Massachusetts .....	C
Region II:	
New Jersey .....	C
Region III:	
Pennsylvania .....	C
Virginia .....	C
Region IV:	
Alabama .....	C
South Carolina .....	C
Region V:	
Indiana .....	C
Michigan .....	C
Minnesota .....	C
Ohio .....	C
Region VI:	
Oklahoma .....	C
Region VII:	
None.	
Region VIII:	
None.	
Region IX:	
American Samoa .....	C
California .....	C
Guam .....	C
Hawaii .....	C
Northern Mariana Islands .....	C
Region X:	
Washington .....	C

<sup>a</sup> Any large MWC units in these States are covered by the proposed Federal plan.

<sup>b</sup> Status codes.

A=Negative declaration submitted. No State plan is expected. However, in the unlikely event that large MWC units are subsequently identified in any of these States, this Federal plan would automatically apply to them.

B=State plan has been submitted and is being reviewed by EPA. If the plan is approved, MWC units in these States would not be subject to the promulgated Federal plan.

C=State plan or negative declaration submitted has not been received.

While section 129 of the Act specifies that the Federal plan would apply to units in any State that has not submitted an "approvable" plan by December 19, 1997, the proposed language in § 62.14100 refers to units in States for which a State plan has not been "approved." Because this Federal plan will be promulgated in 1998, EPA expects to have approved or disapproved State plans that are submitted by December 19, 1997. Thus, when this Federal plan is promulgated, any "approvable" State plans that were submitted by December 19, 1997, will likely have been "approved."

**Regulated Entities.** Entities regulated by this action are existing MWC units with capacities to combust greater than 250 tons per day of MSW unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA. The EPA projects that this proposed MWC Federal plan could initially affect up to 143 MWC units at 59 plants in 23 States. However, many State plans are expected to be approved by the time the Federal plan is promulgated. Based on current expectations, this Federal plan may affect 53 MWC units at 21 plants by June 1998 and 13 MWC units at 4 plants by June 1999. Regulated categories and entities include:

Category	Examples of regulated entities
Industry and Local Government Agencies .....	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this MWC Federal plan. For specific applicability criteria, see §§ 62.14100 and 62.14102 of subpart FFF.

**Electronic Submittal of Comments.** Comments and data may be submitted electronically via electronic mail (E-mail) or on disk. Electronic comments on this proposed rule may be filed via

E-mail at most Federal Depository Libraries. E-mail submittals should be sent to A-and-R-Docket@epamail.epa.gov. No confidential business information should be submitted through E-mail. Comments and data also will be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. Electronic comments must avoid the use of special characters and any form of encryption. All comments and data for

this proposal, whether in paper form or electronic forms, must be identified by docket number A-97-45.

**Regional Office Contacts.** For information regarding the implementation of the MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 2.

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Bldg., Boston, MA 02203-0001 .....	(617) 565-9462	(617) 565-4940
Christine DeRosa, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007-1866 .....	(212) 637-4022	(212) 637-3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 841 Chestnut Bldg., Philadelphia, PA 19107 .....	(215) 556-2190	(215) 566-2134
Brian Beals, Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., N.E., Atlanta, GA 30365 .....	(404) 562-9098 (404) 562-9127	(404) 562-9095
Douglas Aburano (MN), Mark Palermo (IL, IN, OH), Rick Tonielli (MI), Charles Hatten (WI), U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604 .....	(312) 353-6960 (312) 886-6082 (312) 886-6068 (312) 886-6031	(312) 886-5824
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202-2733 .....	(214) 665-7219	(214) 665-7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101 .....	(913) 551-7603	(913) 551-7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202-2466 .....	(303) 312-6440	(303) 312-6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105 .....	(415) 744-1188	(415) 744-1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101 .....	(206) 553-1814	(206) 553-0404

## II. Required Elements of the Proposed MWC Federal Plan

Sections 111(d) and 129 of the Act, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the promulgated emission guidelines. Subparts B and Cb of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being proposed in lieu of State plans, it includes the same essential elements: (1) identification of legal authority, (2) identification of mechanisms for implementation, (3) inventory of affected facilities, (4) emission inventory, (5) emission limits, (6) compliance schedules, (7) public hearing requirements, (8) reporting and recordkeeping requirements, and (9) public progress reports. Each State plan element is summarized below as it relates to this proposed MWC Federal plan.

### A. Legal Authority and Mechanisms for Implementation

As a required element of a State plan, a State must demonstrate that it has the legal authority to adopt and implement the emission requirements and compliance schedules in the State plan. The State also must identify the enforceable State mechanism for implementing the emission guidelines (e.g., a State rule or other State enforcement mechanism). Section 129(b)(3) of the Act requires EPA to

develop a Federal plan for States that do not submit an approvable State plan within 2 years after promulgation of the emission guidelines. By proposing this MWC Federal plan, EPA is fulfilling its obligation under the Act to establish emission limits and other requirements for MWC units in States that have not yet submitted approvable plans. The EPA is proposing a Federal regulation under the legal authority of the Act as the mechanism to implement the emission guidelines. However, as discussed in section VI of this preamble, implementation and enforcement of the Federal plan can be delegated to State and local agencies. Furthermore, when a State plan is approved, the Federal plan will no longer apply to MWC units covered by a State plan.

### B. Inventory of Affected MWC Units

As a required element, a State plan must include a complete source inventory of MWC units affected by the emission guidelines. Consistent with the requirement for State plans to include an inventory of MWC units, docket A-97-45 contains an inventory of large MWC units covered by this proposed MWC Federal plan. The inventory is contained in a memorandum entitled "Inventory and Emission Estimates for Large Municipal Waste Combustor Units Covered by the Proposed Federal Section 111(d)/129 Plan" (A-97-45, II-B-1). Item II-B-1 serves both the MWC inventory requirement and the MWC emission inventory requirement, which will be discussed in the following

section. The inventory is based on information available to EPA during development of the 1995 emission guidelines and recent information from EPA Regional Offices.

### C. Inventory of Emissions

As a required element, a State plan must include an emission inventory for MWC units subject to the emission guidelines. The pollutants to be inventoried include dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and sulfur dioxide (SO<sub>2</sub>). For this proposal, EPA has estimated the emissions from each MWC unit that would be covered by the Federal plan for all pollutants regulated by the Federal plan. This emission inventory is item II-B-1 in docket A-97-45. Table 3 of this preamble summarizes the results of the inventory for those States that do not have an approved State plan. Pollutant emissions are expressed in megagrams per year (Mg/yr) for most pollutants and grams per year (g/yr) for dioxins. The emission inventory is based on information known about the combustor and uses emission factors contained in "Compilation of Air Pollutant Emission Factors" (AP-42). Refer to the emission estimates memorandum in docket A-97-45 for the complete emissions inventory and details on the calculations.

TABLE 3.—SUMMARY OF CURRENT EMISSIONS FROM LARGE MWC UNITS BY STATE

Region/state	Dioxins/ furans (g/yr)	Cd (Mg/yr)	Pb (Mg/yr)	Hg (Mg/yr)	PM (Mg/yr)	HCl (Mg/yr)	SO <sub>2</sub> (Mg/yr)	NO <sub>x</sub> (Mg/yr)
<b>Region I:</b>								
Connecticut .....	53	0.027	0.477	1.74	78	144	476	3684
Maine .....	56	0.006	0.296	0.06	32	24	145	1334
Massachusetts .....	673	0.103	1.86	4.13	126	543	1466	5866
New Hampshire .....	15	0.002	0.024	0.2	13	48	109	277
Rhode Island .....	0	0	0	0	0	0	0	0
Vermont .....	0	0	0	0	0	0	0	0
<b>Region II:</b>								
New Jersey .....	394	0.014	0.521	2.35	56	145	499	2737
New York .....	619	0.304	1.33	4.61	156	2492	1911	5293
Puerto Rico .....	0	0	0	0	0	0	0	0
<b>Region III:</b>								
Delaware .....	0	0	0	0	0	0	0	0
District of Columbia .....	0	0	0	0	0	0	0	0
Maryland .....	493	0.277	1.084	2.47	89	2241	1332	1964
Pennsylvania .....	178	0.092	0.506	3.23	93	714	918	3571
Virginia .....	46	0.034	0.712	1.34	58	144	464	3007
Virgin Islands .....	0	0	0	0	0	0	0	0
West Virginia .....	0	0	0	0	0	0	0	0
<b>Region IV:</b>								
Alabama .....	2	0.003	0.025	0.05	7	22	58	383
Georgia .....	108	0.06	0.226	0.52	16	485	263	277
Kentucky .....	0	0	0	0	0	0	0	0
Mississippi .....	0	0	0	0	0	0	0	0
South Carolina .....	69	0.001	0.81	0.36	7	15	59	333
Tennessee .....	227	0.125	0.475	1.09	33	1019	551	583
<b>Region V:</b>								
Illinois .....	4	0.001	0.3	0.02	14	9	4	283
Indiana .....	28	0.011	0.087	0.96	23	75	199	1311
Michigan .....	465	0.084	0.837	1.03	89	627	589	3085
Minnesota .....	268	0.039	0.807	0.8	168	983	676	2717
Ohio .....	18	0.01	0.264	0.44	5	25	87	206
Wisconsin .....	0	0	0	0	0	0	0	0
<b>Region VI:</b>								
Arkansas .....	0	0	0	0	0	0	0	0
Louisiana .....	0	0	0	0	0	0	0	0
New Mexico .....	0	0	0	0	0	0	0	0
Oklahoma .....	244	0.134	0.509	1.17	36	1092	590	624
Texas .....	0	0	0	0	0	0	0	0
<b>Region VII:</b>								
Kansas .....	0	0	0	0	0	0	0	0
Iowa .....	0	0	0	0	0	0	0	0
Missouri .....	0	0	0	0	0	0	0	0
Nebraska .....	0	0	0	0	0	0	0	0
<b>Region VIII:</b>								
Colorado .....	0	0	0	0	0	0	0	0
Montana .....	0	0	0	0	0	0	0	0
North Dakota .....	0	0	0	0	0	0	0	0
South Dakota .....	0	0	0	0	0	0	0	0
Utah .....	0	0	0	0	0	0	0	0
Wyoming .....	0	0	0	0	0	0	0	0
<b>Region IX:</b>								
American Samoa .....	0	0	0	0	0	0	0	0
Arizona .....	0	0	0	0	0	0	0	0
California .....	31	0.011	0.094	1.04	25	81	216	1017
Guam .....	0	0	0	0	0	0	0	0
Hawaii .....	35	0.026	0.387	0.14	32	58	523	1646
Nevada .....	0	0	0	0	0	0	0	0
Northern Mariana Islands .....	0	0	0	0	0	0	0	0
<b>Region X:</b>								
Alaska .....	0	0	0	0	0	0	0	0
Idaho .....	0	0	0	0	0	0	0	0
Washington .....	10	0.004	0.029	1.19	8	25	67	318

**D. Emission Limits**

*Emission Limits.* As a required element, a State plan must include

emission limits. Section 129(b)(2) requires these emission limits to be “at least as protective as” those in the

emission guidelines. The emission limits in this proposed MWC Federal plan are the same as those contained in

the emission guidelines (40 CFR part 60, subpart Cb) as amended on August 25, 1997 (62 FR 45116). The emission limits and additional requirements are summarized in section V of this preamble. (See the discussion in *An Approved State Plan Is No Longer As Protective As The Emission Guidelines—Partial Transfer of Authority Through Delegation* in section VI of this preamble for a discussion of State plans that do not include the amended emission limits.)

The emission limits for all pollutants except NO<sub>x</sub> can be achieved by the combination of good combustion practices (GCP), post-combustion control by a spray dryer with either an electrostatic precipitator (ESP) or a fabric filter, and supplemented with activated carbon injection. For MWC units requiring NO<sub>x</sub> control, the limits can be achieved using selective noncatalytic reduction (SNCR). This combination of controls was determined to represent the Maximum Achievable Control Technology (MACT) under the section 129 guidelines. An MWC owner or operator is free to employ any techniques to comply with the proposed MWC Federal plan, as long as the numerical emission limits for all pollutants are met.

The emission guidelines, as amended on August 25, 1997, apply the emission limits for SO<sub>2</sub>, HCl, Pb, and NO<sub>x</sub> in two stages. The final guidelines require compliance with the emission limits in the 1995 guidelines by December 19, 2000 and compliance with the four amended emission limits by August 25, 2002. Specifically, the final emission guidelines require compliance with SO<sub>2</sub> and HCl limits of 31 parts per million by volume (ppmv) by December 19, 2000 and 29 ppmv by August 25, 2002. The lead limit is 0.49 milligrams per dry standard cubic meter (mg/dscm) by December 19, 2000, and 0.44 mg/dscm by August 25, 2002. The NO<sub>x</sub> limit for one type of MWC, fluidized bed combustors, decreases. The four amended limits were added as a result of a court decision, as described in 62 FR 45116 (August 25, 1997).

This proposed Federal plan addresses the emission limits in 40 CFR part 60, subpart Cb, including the final amended limits for the four pollutants, and would require compliance with all limits by December 19, 2000. The same types of air pollution control technology served as the basis for both the 1995 and the amended limits: spray dryer/fabric filter or ESP, carbon injection, and SNCR for non-refractory combustor types. Large MWC units would need to install these controls by December 19, 2000 to meet the original limits, and as soon as the

controls are installed, they will also meet the final, amended limits. Thus, for simplicity, this proposed Federal plan includes only the final, amended emission limits for these four pollutants.

**Operator Training and Certification.** The emission guidelines require American Society of Mechanical Engineers (ASME) or a comparable State program for operator certification for chief facility operators and shift supervisors, and an EPA or State MWC operator training course for chief facility operators. In States that have not yet submitted State plans or that do not have State operator training and certification programs, ASME certification and the EPA operator training course would be required. However, some States already have submitted to EPA either a partial or a complete State plan allowing State training courses and/or State certification programs. The EPA is reviewing these plans, but has not approved them yet, so the facilities in these States would be covered by this proposed MWC Federal plan until EPA approves the State plan. Because this Federal plan is an interim action until State plans are approved, the Federal plan includes State certification and State training courses if submitted in a State plan. Therefore, this proposed Federal plan would allow ASME or State certification in Connecticut and Maryland. This proposed Federal plan also would allow EPA or State operator training courses in Connecticut. The EPA requests information on whether other States that will be submitting plans in the near future have State certification programs and/or State operator training courses. If States submit this information to EPA before the end of the comment period for this proposal (March 24, 1998), EPA intends to allow State certification and State operator training courses in the promulgated Federal plan for those States.

**NO<sub>x</sub> Trading.** The emission guidelines [§ 60.33b(d)] allow States to establish programs to allow owners or operators of existing MWC units to trade nitrogen oxide emission credits. At this time, no State has submitted such a program for approval as part of their State plan. However, a State could include such a program in a future State plan submittal for approval by the Administrator on a case-by-case basis prior to implementation. Trading programs are not included in the proposed MWC Federal plan for the following reasons: (1) No State has requested such a trading program; (2) these trading programs, if approved by the State, are to be proposed by the State

for potential approval by EPA; and (3) at least one State has specifically excluded MWC units from their State trading program. States may still allow an owner or operator to use that State's NO<sub>x</sub> trading program to meet the Federal plan emission limits. For example, if a State allows an owner or operator to use that State's NO<sub>x</sub> trading program to meet the emission limits rather than retrofit control equipment, then the owner or operator would submit its trading approach to the State for case-by-case approval. Then, the State would follow that State's approved procedures for approving the owner or operator's approach and then the owner or operator would submit the State-approved, source-specific trading approach to EPA for case-by-case approval in time to commence the trading program by the date the final control plan is due for the specific MWC units. (See section II.E for additional discussion on determining the dates for achieving the increments of progress.) Please note that both the owner or operator and the State must act expeditiously in order to ensure that the public and EPA have sufficient time to review the specifics of the proposed trade. In general, EPA supports open market concepts, including trading, especially when they can be harnessed to achieve environmental limits, minimize costs, and EPA can ensure the technical validity and appropriate tracking of the parameters of the trade.

**NO<sub>x</sub> Emission Averaging.** The emission guidelines allow States to allow the owner or operator of an affected facility to implement a NO<sub>x</sub> emission averaging plan within an MWC plant with multiple MWC units. (See 40 CFR 60.33b(d), subpart Cb.) At this time, no State has submitted such plant-wide emission averaging for approval as part of their State plan, nor have any States approved such averaging as part of the initial compliance report as specified in 40 CFR 60.59b(f) or the annual compliance report specified in 40 CFR 60.59b(g), as applicable. Therefore, no source-specific averaging plans are included in this Federal plan. However, a State could propose a NO<sub>x</sub> emission averaging plan in a future State plan submittal for potential approval by EPA prior to implementation. Furthermore, an owner or operator may propose to use plant-wide NO<sub>x</sub> emission averaging to meet the Federal plan NO<sub>x</sub> emission limits. The proposed NO<sub>x</sub> emission averaging plan must be submitted in the initial compliance report specified in 40 CFR 60.59b(f) or annual compliance report

specified in 40 CFR 60.39b(g), as applicable, prior to implementation.

#### *E. Compliance Schedules and Increments of Progress*

As a required element, a State plan must include compliance schedules for retrofitting controls to comply with the emission guidelines. Because this proposed MWC Federal plan is being implemented in lieu of State plans, its compliance schedule includes the same five increments of progress as required in a State plan. The Federal plan increments of progress are consistent with the State plan requirements in 40 CFR 60.24 of subpart B. These increments of progress are required for compliance schedules that are longer than 12 months. The increments of progress in the Federal plan (and any approved State plan) are the primary mechanism for ensuring progress toward final compliance. Each increment of progress has a specified date for achievement.

This proposed Federal plan includes the five increments of progress and provides three options to establish the increment dates. Under all three options the five increment dates are defined and are enforceable. The Federal plan could function with only one option, but in order to provide maximum flexibility, this proposal includes three options. The EPA requests comments on each of the options and on the desirability of including these multiple options in the final Federal plan. Based on comments received, the final Federal plan will include one, two, or three options. All three options are discussed in more detail following the definitions for the increments of progress as listed below.

##### 1. Increments of Progress

The increments of progress to be measured are: (1) Submitting a final control plan, (2) awarding contracts for control systems or process modifications or orders for purchase of components, (3) beginning on-site construction or installation of the air pollution control device(s) or process changes, (4) completing on-site construction or installation of the air pollution control device(s) or process changes, and (5) final compliance.

The MWC owner or operator is responsible for meeting each of these five increments of progress for each MWC unit no later than the applicable compliance date. The owner or operator must notify EPA as each increment of progress is achieved (or missed). The notification must identify the increment and the date the achieved increment was met (or missed). For an increment achieved late, the notification must

identify the increment and the date the increment was ultimately achieved.

The owner or operator must mail the (post-marked) notification to the applicable EPA Regional Office within 10 business days of the increment date defined in the Federal plan. (See table 2 under the "Supplementary Information" section of this document for a list of Regional Offices.) The definition of each increment of progress follows:

**Submit a Final Control Plan.** To meet this increment, the owner or operator of each MWC unit must submit a plan that describes the air pollution control devices or process changes that will be employed so that each MWC unit complies with the emission limits and other requirements. The plan must include a complete analysis of the applicable regulatory requirements and methods of compliance and selected control technology options available to meet these requirements. (The EPA intends to provide compliance assistance information to MWC owners and operators upon request.) The final control plan also must contain engineering specifications and drawings of all air pollution control equipment planned to be installed and/or descriptions of planned process changes. The owner or operator of an MWC unit will typically use the services of architectural and engineering (A/E) firms to obtain the design drawings and other operational characteristics of air pollution control devices to include in the final control plan. The final control plan must include information of sufficient detail to be used to solicit bids to install the air pollution control devices or initiate the process changes. If an MWC owner or operator plans to close a unit rather than retrofit controls to comply with the Federal plan by the applicable compliance date, a final control plan for that unit is not required. The owner or operator, however, must notify EPA of such a cease operation decision by the date the final control plan is due. The owner or operator must also submit a legally enforceable cease operation agreement documenting the date by which the unit will cease operation if operations cease later than 1 year after promulgation of the Federal plan. (See section IV of this preamble for additional discussion of closed and closing units.)

**Award Contract.** To award contract means the MWC owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the

owner or operator may award a number of contracts to complete the retrofit. To meet this increment of progress, the MWC owner or operator must award a contract or contracts to initiate on-site construction, initiate on-site installation of air pollution control devices, and/or incorporate process changes. The owner or operator must mail a copy of the signed contract(s) to EPA within 10 business days of entering the contract(s).

**Initiate On-site Construction.** To initiate on-site construction, installation of air pollution control devices, or process change means to begin any of the following:

- Installation of an air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
  - Physical preparation necessary for the installation of an air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
  - Alteration of an existing air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
  - Alteration of the municipal waste combustion process to accommodate installation of an air pollution control device to be used to comply with the final emission limits as outlined in the final control plan;
- or
- Process changes identified in the final control plan being made to meet the emission standards.

**Complete On-site Construction.** To complete on-site construction means that all necessary air pollution control devices or process changes identified in the final control plan are in place, on site, and ready for operation on the MWC unit. If the owner or operator of an MWC unit is unable to complete on-site construction prior to December 19, 2000 and, therefore ceases an MWC unit's operation and plans to restart it, the owner or operator must notify EPA and enter into a legally enforceable cease operation agreement by the date the final control plan is due. (See section IV of this preamble for additional discussion of closed and closing units.)

**Final Compliance.** To be in final compliance means to incorporate all process changes or complete retrofit construction as designed in the final control plan and to connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line all necessary process changes or air pollution control equipment are operating as designed. Within 180 days after the date the facility is required to achieve final compliance, the initial performance test must be conducted. On

or after the date the initial performance test is completed or is required to be completed, whichever is earlier, no pollutant may be discharged into the atmosphere from an affected facility in excess of the applicable emission limits.

## 2. Summary of Three Options for Determining Schedule Increment Dates

The proposed Federal plan includes three options for establishing the increment dates. The compliance schedule for facilities affected by this MWC Federal plan could be established by option 1 (generic compliance schedule proposed by EPA), option 2 (facility-specific schedule consistent with the State plan submitted to EPA by the State), or option 3 (facility-specific schedule submitted to EPA by the owner or operator of the MWC unit or the State). Under all three options the five increment dates would be defined and are enforceable.

In cases where option 2 or 3 has not been exercised, the owner or operator of an affected facility would be subject to option 1 (generic schedule). However, if the State or the MWC owner or operator submits a schedule that EPA approves (option 2 or 3), the owner or operator would be subject to that alternative schedule. Under option 2, States may submit increment schedules to EPA prior to the end of the comment period for this proposal March 24, 1998. Under option 3, an MWC owner or operator or the State may submit a schedule to EPA at the time the final control plan is due under the option 1 generic compliance schedule September 21, 1998. In options 2 and 3, EPA would review the schedules and incorporate them into the Federal plan. Each of the options is discussed in detail below.

**Option 1. Generic Compliance Schedule.** Option 1 is the generic default alternative. For MWC units covered by the Federal plan where State plans or compliance schedules have not been submitted, EPA is proposing generic compliance schedules and increments of progress. Alone, option 1 could be unnecessarily inflexible and reflects past approaches to regulatory compliance. However, option 1 is necessary to establish a baseline where neither option 2 nor 3 is exercised. Within option 1, the same generic schedule would apply to each MWC unit for all pollutants except dioxin and mercury. The compliance schedule for dioxin and mercury depends on the date of the MWC unit's construction, as described below.

The emission guidelines and section 129(b)(2) allow MWC units to complete retrofits or close no later than December 19, 2000. To be consistent with the

emission guidelines, the final compliance date (for all pollutants except mercury and dioxin) in the proposed Federal plan is December 19, 2000. Because many MWC units are expected to retrofit combustion controls, as well as acid gas, PM, mercury, and/or NO<sub>x</sub> controls to meet the emission limits (e.g., spray dryer/fabric filter or ESP, carbon injection, and/or SNCR), under this proposal they are given the maximum time (until December 19, 2000) to complete retrofits.

The emission guidelines require MWC units that commenced construction, reconstruction, or modification after June 26, 1987 to achieve compliance with the mercury and dioxin limits within 1 year after State plan approval (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required, whichever is later). The EPA is, therefore, proposing to require compliance with the mercury and dioxin limits within 1 year after promulgation of the MWC Federal plan (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required, whichever is later).

The EPA is proposing increments of progress as part of the generic compliance schedule. Tables in subpart FFF show the proposed increments of progress for pre-1987 units (December 19, 2000 schedule for all pollutants) and post-1987 units (1 year schedule for dioxin and mercury, December 19, 2000 schedule for all other pollutants).

While the generic compliance schedule is ambitious, EPA believes it is achievable because MWC owners and operators and States have known that they would need to install controls by December 19, 2000 as a result of the promulgation of the emission guidelines on December 19, 1995. Thus, MWC units already should have been developing their final control plans and should be ready to begin retrofits quickly. Furthermore, EPA believe that the generic compliance schedules are necessary to ensure final compliance by December 19, 2000.

The generic compliance schedule and increments of progress are based on case studies of four MWC plants that either completed or are in the process of completing retrofits of the controls needed to meet the subpart Cb emission limits. The EPA reviewed the retrofit schedules for MWC units at four MWC plants containing 12 MWC units. The retrofit case studies are documented in docket A-97-45 (II-A-1 through II-A-5).

The EPA compared the four retrofits to the increments of progress required

by subpart B and determined appropriate time intervals for each increment. To provide maximum flexibility, the first three Federal plan increments are based on the maximum time required by any of the retrofits studied. The fourth increment was established to provide the maximum time to complete retrofits and still meet the final compliance date. The final increment (final compliance by December 19, 2000) is dictated by the Act.

The generic compliance schedule would apply to all MWC units subject to this MWC Federal plan, except those units that are subject to site-specific compliance schedules as submitted under option 2 or 3. If a large MWC unit will not complete construction and achieve final compliance by December 19, 2000, the guidelines allow and this proposed Federal plan would allow the unit to cease operation by December 19, 2000, complete the retrofit while not operating, and comply upon restarting. (See section IV of this preamble for a discussion of closed and closing units.)

**Option 2. Site-specific Compliance Schedules Submitted by States.** Under option 2, States would submit increment dates as negotiated with MWC owners or operators to EPA before the end of the comment period of this proposal. Following review and approval of these schedules, EPA would add them to the Federal plan. This assures the Federal plan is fully consistent with State plans that are approved after the Federal plan is promulgated. In some cases the State already has negotiated a retrofit schedule with the MWC owner or operator, determined what retrofit schedule is feasible, held public hearings, and considered public comments.

Several States have already submitted compliance schedules to EPA and these site-specific compliance schedules are included in this proposed Federal plan. The following States have submitted compliance schedules as of December 19, 1997: Georgia, New York, New Jersey, Maine, Maryland, Michigan, Minnesota, Pennsylvania, Tennessee, and Virginia. Some schedules have already been reviewed by EPA. Other schedules have not yet been reviewed because of their late arrival. The EPA will review these schedules concurrently with other compliance schedules submitted under this option. The site-specific compliance schedule table in subpart FFF contains the site-specific compliance schedules submitted to EPA. Some MWC units have already met some of their increments of progress.

*Option 3. Site-specific Compliance Schedules Submitted by MWC Owners or Operators or the State.* The third option for determining the compliance dates is for the MWC owner or operator or the State to submit a site-specific date for achieving increments 2, 3, and 4 to EPA for approval. The dates for increment 1 (submitting a final control plan) and increment 5 (achieving final compliance) would be the same as option 1. As documented in the retrofit studies (docket A-97-45), the date for achieving the first increment (September 21, 1998) reflects the maximum time required by any of the retrofits studied. The final increment compliance date (December 19, 2000) is dictated by the Act.

The EPA recognizes that flexibility may be needed for the award contract date, the start construction date, and the finish construction date given facility-specific retrofit considerations and constraints. Therefore, under option 3, EPA is requesting facility-specific compliance schedules from MWC owners or operators or the State.

The State or the MWC owner or operator (preferably after consulting with the State) would submit alternative dates for increments 2, 3, and 4 to EPA on September 21, 1998, at the time the final control plan is due. The MWC owner or operator would submit a copy of the compliance schedule to both EPA and the State. The EPA would review the schedule and coordinate with the owner or operator and the State. Following EPA approval, EPA would add the schedule to the site-specific compliance schedule table in subpart FFF as a technical amendment.

In summary, the proposed MWC Federal plan includes three options for defining the five increment dates. The EPA believes including all three options in the Federal plan maximizes flexibility and increases regulatory efficiency. The EPA specifically requests comments on each of the options provided in this proposal, as well as comments on the desirability of including only a subset of the options in the final Federal plan.

#### *F. Record of Public Hearings*

As a required element of a State plan, a State must include opportunity for public participation in developing, adopting, and implementing the State plan. For this MWC Federal plan, a public hearing will be held in Washington, DC, if individuals request to speak. In addition, a public hearing will be held in any State with an MWC unit covered by the proposed MWC Federal plan, if individuals request to speak. (See the Dates section of this

preamble.) The hearing record will appear in docket A-97-45. A hearing would be held in Washington, DC because most of the MWC units affected by the Federal plan are located in the eastern United States and Washington, DC is easily accessible. Written public comments also are solicited. (See the Addresses section of this document.) The EPA will review and consider the oral and written comments in developing the final Federal plan.

#### *G. Testing, Monitoring, Recordkeeping, and Reporting*

As a required element, a State plan must include the test methods listed in 40 CFR 60.58b of subpart Eb and the recordkeeping and reporting requirements listed in 40 CFR 60.59b of subpart Eb. The proposed MWC Federal plan includes the same provisions.

#### *H. Progress Reports*

As a required element of a State plan, a State must submit to EPA annual reports on progress in the implementation of the emission guidelines. Emissions data would be reported to the Aerometric Emissions Information Retrieval System Facility Subsystem as specified in 40 CFR part 60, appendix D. If a State has been delegated authority to implement and enforce the proposed Federal plan, the State would submit annual progress reports to EPA, as required by 40 CFR 60.25(e) of subpart B. These reports can be combined with the State Implementation Plan report required by 40 CFR 51.32 of subpart Q, in order to avoid duplicative reporting. Each progress report should include compliance status, enforcement actions, increments of progress, identification of sources that have ceased operation or started operation, updated emission inventory and compliance information, and copies of technical reports on any performance testing and monitoring. For MWC units in States where authority has not been delegated, EPA intends to prepare annual progress reports.

### **III. Proposed Amendments to General Provisions of 40 CFR Part 62**

The proposed Federal plan would be added as a new subpart to 40 CFR part 62. Part 62 currently contains approvals and promulgations of State plans developed under section 111(d) of the Act. The MWC Federal plan is developed under both sections 111(d) and 129 of the Act. This proposal would amend the general provisions (subpart A) of part 62 to specify that Federal plans are contained in part 62. It would also amend the introductory text in § 62.02 to refer to section 129, as

applicable, in addition to section 111(d). This is necessary because MWC State plans that are approved and published in part 62, as well as the proposed Federal plan, are developed to meet the requirements of both sections 111(d) and 129 of the Act.

### **IV. Implications for Closed Units, Units That Plan To Close, and Units That Plan To De-Rate**

The emission guidelines (40 CFR part 60, subpart Cb) require MWC units to comply with the emission limits or close within 3 years following approval of a State plan, but no later than December 19, 2000. Units subject to the Federal plan would also be required to comply or close by December 19, 2000. The Federal plan, consistent with the emission guidelines, would further require that if the owner or operator of a large MWC unit is planning to cease operation of the unit, the owner or operator must either cease operation of the unit within 1 year of promulgation of this Federal plan or submit a "closure agreement" (i.e., a cease operation agreement) that defines the date operation will cease. Cease operation agreements must be legally enforceable.

This section describes how this Federal plan addresses various categories of closed MWC units and de-rated MWC units, including:

- Dismantled MWC units;
- MWC units that have ceased operation;
- MWC units that will cease operation within 1 year of Federal plan promulgation;
- MWC units that will cease operation later than 1 year after Federal plan promulgation;
- MWC units that will cease operation and plan to restart after December 19, 2000; and
- MWC units that will de-rate (reduce capacity).

#### *A. Dismantled Units*

Units that are partially or fully dismantled are not required to be included in the MWC unit inventory that is an element of a State plan or this Federal plan. MWC units are partially or fully dismantled if they have been physically altered so they cannot operate. Dismantled units cannot be restarted without extensive work; and if they were restarted, they would be considered a new unit and would be subject to the subpart Eb new source performance standard (NSPS) rather than to the State or Federal plan for existing units.

#### *B. Units That Have Ceased Operation*

MWC units that are known to have ceased operation already (but are not known to be dismantled) are included in the inventory element of this proposed Federal plan. Such units must

also be identified in any State plans submitted to EPA. If the owner or operator of these inactive MWC units plans to restart these units before December 19, 2000, the units would be required to achieve the same compliance schedule required for other MWC units and final compliance would be achieved for all pollutants no later than December 19, 2000. In order to assure compliance by the required date, the owner or operator of units that have ceased operation, but who plans to restart the units before December 19, 2000, must submit a final control plan and the units must comply with the five increments of progress on the same generic schedule as other MWC units subject to this Federal plan. (See section II.E for a discussion of compliance schedules and increments of progress.)

If inactive MWC units will not be restarted until after December 19, 2000, a control plan would not be needed. However, the proposed Federal plan specifies that any units that have ceased operation and are planned to be restarted after December 19, 2000, must complete retrofit and comply with the emission limits and operational requirements immediately upon restarting. Performance testing to demonstrate compliance would be required within 180 days after restarting. The dates for increments of progress that lead to final compliance (e.g., awarding contracts, initiating on-site construction, completing on-site construction) would not need to be specified for units that have ceased operation and plan to restart after December 19, 2000, because these activities would occur before restart while the units are closed and have no emissions. If a unit was operated after December 19, 2000 without complying, it would be a violation of the Federal plan.

#### *C. Units That Will Cease Operation Within 1 Year of Federal Plan Promulgation*

The owner or operator of currently operating MWC units subject to this Federal plan who will cease operation of the units rather than comply with the emission limits would be required to notify EPA at the time that final control plans are due. The owner operator would specify whether the MWC units will cease operation within 1 year or at a later date. If the owner or operator notifies EPA that the MWC units will cease operation within 1 year of promulgation of this Federal plan, the owner or operator would not be required to enter into a cease operation agreement. However, if the owner or operator does not cease operation of the

units by the date 1 year after promulgation, it would be a violation of the Federal plan.

#### *D. Units That Will Cease Operation Later Than 1 Year After Federal Plan Promulgation*

The owner or operator of an MWC unit that will cease operations more than 1 year after promulgation of the Federal plan would be required to notify EPA at the time the final control plan is due that the owner or operator will cease operation of the unit. The owner or operator of such an MWC unit also would need to enter into a legally enforceable cease operation agreement with EPA by the date the final control plan is due. The cease operation agreement would include the date that operation will cease. The owner or operator of an affected MWC unit that is ceasing operation more than 1 year after promulgation of this Federal plan would also submit data for dioxin/furan emission tests by the date 1 year after promulgation of this Federal plan per § 62.14109 of the proposed Federal plan rule. This requirement is consistent with subpart Cb. The cease operation agreement ensures that the MWC unit will cease operation by an agreed-upon enforceable date. In all cases, this date would be no later than December 19, 2000.

#### *E. Units That Will Cease Operation and Plan to Restart After December 19, 2000*

MWC units covered by this Federal plan that will cease operation can be restarted after December 19, 2000 if the units achieve compliance upon restarting. The proposed Federal plan allows for MWC units that cease operation by December 19, 2000 and then restart as part of their retrofit schedule, because it may not be feasible for the owner or operator of every MWC unit at every MWC plant to complete every unit's retrofit by December 19, 2000. Some owners or operators will wish to stagger retrofit of their units to maintain service. For example, an MWC plant owner or operator may complete retrofits on two of three MWC units before December 19, 2000 and those two units could remain in operation. The owner or operator could cease operation of the third unit on December 19, 2000 and complete the unit's retrofit prior to restarting. (Performance testing on the third unit would be conducted within 180 days of restarting the retrofitted MWC unit.)

If the owner or operator of MWC units covered by this Federal plan wishes to include ceasing operations as part of the retrofit schedule, the owner or operator would be required to notify EPA at the

time the final control plan is due. The owner or operator would also enter into a cease operation agreement if the unit ceases operation later than 1 year after Federal plan promulgation as described in section IV.D. The proposed Federal plan specifies that when an MWC unit restarts after December 19, 2000, it must comply with the Federal plan emission limits and operational requirements upon restarting. There would be no need to establish and meet specific dates for the remaining increments of progress (i.e., awarding contracts, initiating on-site construction, completing on-site construction, and final compliance) because these increments would be completed while the unit is closed and there are no emissions. The proposed Federal plan specifies that the unit must achieve final compliance with the Federal plan emission limits and operating requirements as soon as it is restarted. The performance test to demonstrate compliance would be required within 180 days after restarting.

#### *F. Units That Plan To De-rate*

The proposed Federal plan would allow the owner or operator of an MWC unit to de-rate the capacity of an MWC unit to below 250 tons per day. Therefore, the MWC unit would be no longer be subject to the MWC Federal plan. De-rating means a permanent change that physically reduces the capacity of the MWC unit to less than 250 tons per day of MSW. (De-rating cannot be a permit provision, but must be a permanent physical restriction). The owner or operator that plans to de-rate an MWC unit would de-rate the unit on the same schedule and increments that the MWC unit would have had to follow if it were to be retrofit to meet the emission limits. For example, the owner or operator of an MWC unit that commenced construction before June 1987 that is subject to the proposed generic compliance schedule would need to submit a plan describing the specific physical changes and schedule for accomplishing the de-rating on the date the final control plan is due. The owner or operator would need to award a contract for the physical changes to the units to accomplish the de-rating by the date MWC units are required to award contracts for retrofit of air pollution control equipment. The owner or operator would need to initiate on-site construction and complete on-site construction to accomplish the de-rating by the dates for these increments specified in the proposed generic compliance schedule. Once the MWC unit physically is unable to combust

more than 250 tons per day, it would no longer subject to the MWC Federal plan.

#### V. Summary of Federal Plan Emission Limits and Requirements

The proposed MWC Federal plan (40 CFR part 62, subpart FFF), which will

implement the emission guidelines, includes emission limits, operating practice requirements, operator training and certification requirements, and compliance and performance testing requirements. These emission limits and

requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cb), as amended. Table 4 summarizes the requirements of the Federal plan rule (40 CFR part 62, subpart FFF).

TABLE 4.—SUMMARY OF FEDERAL PLAN REQUIREMENTS FOR EXISTING MWCs<sup>a</sup>

#### Applicability:

The Federal plan would apply to existing MWC units with capacities to combust greater than 250 tons per day of municipal solid waste unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA.

Unit size (MSW combustion capacity)	Requirement
> 250 tons per day (referred to as a large MWC unit)	Subject to provisions listed below.

#### Good Combustion Practices:

- A site-specific operator training manual would be required to be developed and made available for MWC personnel.
- The EPA or a State MWC operator training course would be required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) provisional and full operator certification would be required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level would be required to be measured and not to exceed 110 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature would be required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level would be required to be measured using a CEMS, and the concentration in the flue gas would be required not to exceed the following:

MWC type	CO level	Averaging time
Modular starved-air and excess-air	50 ppmv	4-hour.
Mass burn waterwall and refractory	100 ppmv	4-hour.
Mass burn rotary refractory	100 ppmv	24-hour.
Fluidized-bed combustion	100 ppmv	4-hour.
Pulverized coal/RDF mixed fuel-fired	150 ppmv	4-hour.
Spreader stoker coal/RDF mixed fuel-fired	200 ppmv	24-hour.
RDF stoker	200 ppmv	24-hour.
Mass burn rotary waterwall	250 ppmv	24-hour.

#### MWC Organic Emissions (measured as total mass dioxins/furans):

- Dioxins/furans (performance test by EPA Reference Method 23)

MWC units utilizing an ESP-based air pollution control system	60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing). <sup>b</sup>
MWC units utilizing a nonESP-based air pollution control system	30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing). <sup>b</sup>

- Basis for dioxin/furan limits GCP and SD/ESP or GCP and SD/FF, as specified above.

#### MWC Metal Emissions:

- PM (performance test by EPA Reference Method 5)  
27 mg/dscm (0.012 gr/dscf).
- Opacity (performance test by EPA Reference Method 9).  
10 percent (6-minute average).
- Cd (performance test by EPA Reference Method 29).  
0.040 mg/dscm (18 gr/million dscf).
- Pb (performance test by EPA Reference Method 29).  
0.44 mg/dscm (200 gr/million dscf).
- Hg (performance test by EPA Reference Method 29).  
0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
- Basis for PM, opacity, Cd, Pb, and Hg limits GCP and SD/ESP/CI or GCP and SD/FF/CI.

#### MWC Acid Gas Emissions:

- SO<sub>2</sub> (performance test by CEMS).  
29 ppmv or 80-percent reduction in SO<sub>2</sub> emissions.
- HCl (performance test by EPA Reference Method 26).  
29 ppmv or 95-percent reduction in HCl emissions.
- Basis for SO<sub>2</sub> and HCl limits.  
See basis for MWC metals.

#### Nitrogen Oxides Emissions:

- NO<sub>x</sub> (performance test by CEMS):
 

Mass burn waterwall	205 ppmv.
Mass burn rotary waterwall	250 ppmv.
Refuse-derived fuel combustor	250 ppmv.
Fluidized bed combustor	180 ppmv.
Mass burn refractory	No NO <sub>x</sub> control requirement.

• Basis for NO <sub>x</sub> limits:	
MWC units except refractory .....	SNCR.
Refractory MWC units .....	No NO <sub>x</sub> control requirement.
Fugitive Ash Emissions:	
• Fugitive Emissions (performance test by EPA Reference Method 22).	
Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.	
• Basis for fugitive emission limit .....	Wet ash handling or enclosed ash handling.
Performance Testing and Monitoring Requirements:	
• Reporting frequency .....	Annual (semiannual if violation).
• Load, flue gas temperature .....	Continuous monitoring, 4-hour block arithmetic average.
• CO .....	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.
• Dioxins/furans, PM, Cd, Pb, HCl, and Hg .....	Annual stack test.
• Opacity .....	COMS (6-minute average) and annual stack test.
• SO <sub>2</sub> .....	CEMS, 24-hour daily geometric mean.
Fugitive ash emissions .....	Annual test
• NO <sub>x</sub> .....	CEMS, 24-hour daily arithmetic average.
Compliance Schedule:	
See Section II.E of this preamble.	

<sup>a</sup> All concentration levels in the table are converted to 7 percent O<sub>2</sub>, dry basis.

<sup>b</sup> Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm and 60 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ and 0.7 to 1.4 ng/dscm TEQ, respectively. The optional reduced testing limit of 15 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

## VI. Implementation of Federal Plan and Delegation

The EPA is required to promulgate emission guidelines that are applicable to existing solid waste incineration sources under sections 111(d) and 129 of the Act. However, the emission guidelines are not enforceable until EPA approves a State plan or promulgates a Federal Plan. In cases where a State has not submitted an approvable plan, the EPA must promulgate a MWC Federal plan for sources in the State as a "stop-gap" measure to implement the emission guidelines.

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. See the Act 101(a)(3). Sections 111 and 129 of the Act also intend for the States to take the primary responsibility for ensuring that emission reduction targets are met. The daily administration of a comprehensive air pollution control initiative, such as this MWC Federal plan, cannot be easily accomplished by EPA. Unnecessary Federal intrusion would inevitably result if EPA were to assume the primary burden of enforcing the MWC Federal plan. Accordingly, the EPA has designed the MWC Federal plan to facilitate the transfer of authority from EPA to State and local agencies. For example, the EPA has encouraged States to help determine compliance schedules and to provide operator training and certification requirements for this MWC Federal plan. The EPA has encouraged States to participate in the development of the MWC Federal plan to facilitate the transfer of implementation responsibility.

There are four mechanisms for transferring implementation responsibility to State and local agencies: (1) If EPA approves a State plan submitted to EPA after the Federal plan is promulgated, the State would automatically have authority to enforce and implement the State plan upon EPA approval; (2) if a State does not submit a State plan and does not have a State rule, EPA can use general delegation authority to delegate to State agencies authority to perform certain implementation responsibilities for this Federal plan to the extent allowed by State law; (3) if a State does not submit a State plan but adopts a State rule that is identical to, or as protective as, this Federal plan, then EPA can delegate implementation responsibilities to the State, and (4) if a State plan is modified such that it is no longer as protective as the emission guidelines, then EPA may delegate a portion of the Federal plan. Each of these different options is described in more detail below.

### *A. State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan—Full Transfer of Authority Through State Plan Approval*

Even after an MWC unit in a particular State becomes subject to the Federal plan, the State or a local agency may still adopt and submit to EPA for approval a State plan (i.e., a State plan containing a State rule or other enforceable mechanism, inventories, records of public hearings, and all other required elements of a State plan). The EPA will determine if the State plan is as protective as the emission guidelines.

If EPA determines that the State plan is as protective as the emission guidelines, EPA will approve the State plan. Upon approval of the State plan, the Federal plan will no longer apply to MWC units covered by the State plan and the State will implement and enforce the State plan in lieu of the Federal plan. (The EPA will periodically amend the Federal plan to identify MWC units that are covered in the approved State plan and, therefore, are not subject to the Federal plan.) Making the State plan effective immediately upon approval expedites a State's assumption of responsibility for implementing the 1995 emission guidelines through the State plan mechanism as intended by Congress. However, if EPA determines that the State plan is not as protective as the guidelines, EPA cannot approve the State plan.

### *B. State Takes Delegation of the Federal Plan (No State Plan or State Rule)—Partial Transfer of Authority Through Delegation*

The State may assume implementation responsibilities even if there is no State plan or State rule in effect. To the extent authorized by State law, the EPA believes it is advantageous for State agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the Federal plan. These roles could include: procedural and engineering review of certain permit applications, administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. The EPA would

retain responsibility for bringing enforcement actions against sources violating Federal plan provisions, as well as the authority to terminate, modify, or revoke permits. A Memorandum of Agreement between the appropriate EPA Regional Office and the air pollution control officer or executive officer of the responsible State agency would be used to transfer partial authority. The EPA would announce the terms of the partial delegation in a **Federal Register** notice, and would inform affected sources.

*C. State Adopts a State Rule and Does Not Submit a State Plan—Full Transfer of Authority Through Delegation*

A State may adopt a State rule that is identical to, or as protective as, the MWC Federal plan. The State can then be delegated authority to enforce the State rule, which serves to implement the Federal plan. Such a State can be delegated authority without submitting a full State plan (i.e., without a plan containing an inventory of emissions, public hearings, and all of the other State plan elements) because these elements would be included in the Federal plan that is being delegated to the State. The EPA would evaluate the State rule and, if it is identical to or as protective as the Federal plan, EPA will delegate authority to the State to implement the Federal plan by implementing and enforcing the approved State rule.

To assure timely transfer of implementation authority to States, it is desirable that each State (in which MWC units subject to the MWC Federal plan are located) quickly adopt a State rule that is identical to, or as protective as, the MWC Federal plan. If a State adopts an essentially indistinguishable rule, the EPA intends to delegate full implementation responsibilities to that State immediately following State adoption. The EPA would publish a notice of this delegation of the MWC Federal plan in the **Federal Register** and would, in conjunction with the State, make efforts to ensure that affected sources are aware that a State has assumed responsibility for implementing the MWC Federal plan.

In the event that the State fails to implement its own State rule or subsequently amends the State rule so that it is not as protective as the MWC Federal plan, the EPA will resume direct enforcement of the affected provisions of the MWC Federal plan and withdraw the delegation in whole or in part, as appropriate.

*D. An Approved State Plan Is No Longer as Protective as the Emission Guidelines—Partial Transfer of Authority Through Delegation*

The EPA could also delegate portions of the Federal Plan to a State under certain circumstances. An example would be a State with an approved State Plan that contains the 1995 emission limits. A State plan must incorporate the revised emission limits by 1 year after promulgation of the amendments. If a State plan does not incorporate the amended emission limits by August 25, 1998 (1 year after the promulgation of the amendments to the emission guidelines), then the State plan would no longer be as protective as the emission guidelines. Rather than withdrawing its approval of the entire State plan, the EPA could (to the extent authorized by State law) delegate that portion of the Federal Plan containing the revised emission limits (from the August 25, 1997 amendments) to the State. The State would retain responsibilities for all implementation and enforcement.

**VII. Title V Operating Permits**

All MWC sources subject to this MWC Federal plan must obtain a title V permit. Title V permits issued to sources subject to this MWC Federal plan must include all applicable requirements of this plan. Permitting authorities will enforce these requirements.

**VIII. Units Subject to This Federal Plan and New Source Performance Standards**

This section describes the relationship between the Federal plan and the three NSPS in terms of applicability and emission limits. The MWC emission guidelines apply and this proposed Federal plan would apply to MWC units larger than 250 tons per day in combustion capacity that commenced construction before September 20, 1994. There are also three new source performance standards (NSPS) that apply to MWC units.

The first NSPS for MWC units, 40 CFR part 60 subpart E, was promulgated in 1971. It applies to incinerators charging more than 45 Mg per day (50 tons per day) of MSW that were constructed or modified after August 17, 1971. Subpart E units that combust greater than 225 mg per day (250 tons per day) could also be subject to the Federal plan. The only pollutant regulated by subpart E is PM, and the PM limit is higher than the limit in the proposed Federal plan. Thus, MWC units complying with the Federal plan

PM limit would also comply with the subpart E NSPS emission limit for PM.

The second NSPS, subpart Ea, was promulgated on February 11, 1991 and revised on December 19, 1995. This NSPS applies to MWC units with capacities to combust greater than 250 tons per day, that:

- Commenced construction after December 20, 1989 and on or before September 20, 1994; or
- Commenced modification or reconstruction after December 20, 1989 and on or before June 19, 1996. ("Modification" and "reconstruction" are defined in 40 CFR part 60, subpart A.)

MWC units that started construction between December 20, 1989 and September 20, 1994 could be subject to both this proposed Federal plan (or an approved State plan) and the subpart Ea NSPS. MWC units must comply with the more stringent emission limit. The emission limits in the subpart Ea NSPS are as stringent or more stringent than the Federal plan (limits for the same pollutants) except for the PM and SO<sub>2</sub> limits. The PM and SO<sub>2</sub> limits in this Federal plan are slightly more stringent, but could be met using the same controls. Also this Federal plan has limits for three metals and fugitive ash that are not regulated by subpart Ea. Units already complying with subpart Ea also should be meeting the Federal plan emission limits, but will need to verify that they are indeed in compliance with the slightly more stringent PM, SO<sub>2</sub>, and metals limits contained in the Federal plan.

The third NSPS, subpart Eb, applies to MWC units that:

- (1) Commence construction after September 20, 1994, or
- (2) Commence modification or reconstruction after June 19, 1996. There is no overlap between the proposed Federal plan and the subpart Eb NSPS sources would not be subject to both rules. The emission limits in subpart Eb are as stringent or more stringent than the proposed Federal plan.

**IX. Administrative Requirements**

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Order 12866, Unfunded Mandates Reform Act, and Regulatory Flexibility Act. Many of these administrative requirements were addressed in the preamble to the 1995 emission guidelines (60 FR 65404-65413). Since today's proposed rule merely would implement the emission guidelines promulgated on December 19, 1995 (40 CFR part 60, subpart Cb) as they apply to large MWC units and does not impose any new requirements, many of the

following administrative requirements refer to the administrative requirements in the preamble to the 1995 rule.

#### A. Docket

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the Act, 42 U.S.C. 7607(d). Docket numbers A-89-08 and A-90-45 contain the supporting information for the December 19, 1995 promulgated emission guidelines. Because this proposed rule implements the emission guidelines, these same dockets also contain the supporting information for this proposed rule. Additional supporting information for this proposed rule is contained in docket number A-97-45.

#### B. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, DC 20460 or by calling (202) 260-2740.

The information required by the Federal plan would be used by the Agency to ensure that the MWC Federal plan requirements are implemented and are complied with on a continuous basis. Required records and reports are necessary for EPA to identify MWC units that may not be in compliance with the MWC Federal plan requirements. Based on reported information, EPA would decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of units maintain would indicate to EPA whether MWC personnel are operating and maintaining control equipment properly.

Because the MWC Federal plan is an interim action, EPA is presenting a range of estimated burden. The maximum burden reflects a worst-case scenario in which no additional State plans are approved within 3 years of the Federal plan promulgation. The minimum estimate reflects a more likely scenario in which all remaining State plans are in place at some point within 3 years following promulgation of the MWC Federal plan.

Based on a 1995 MWC inventory and recent information from EPA Regional Offices, this Federal plan is projected to

affect a maximum of 143 MWC units at 59 plants in 23 States. A number of additional State plans will be approved by the time the Federal plan is promulgated, or within the year following promulgation. When a State plan is approved, the Federal plan no longer applies to MWC units covered in that State plan. Thus, the rule will more likely affect about 53 units at 21 plants as of June 1998 and 13 units at 4 plants as of June 1999. The burden has been estimated under both scenarios and is presented as a range.

The maximum estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan would be 40,132 hours annually at a cost of \$15,463,317 (including \$1,561,654 in labor costs) per year to meet the monitoring, recordkeeping, and reporting requirements. The maximum estimated average annual burden, over the first 3 years, for the Agency would be 7,254 hours at a cost of \$327,844 (including travel expenses) per year.

The minimum estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan would be 2,677 hours annually at a cost of \$1,285,000 (including \$104,185 in labor costs) per year to meet the monitoring, recordkeeping and reporting requirements. The minimum estimated average annual burden for the first 3 years for the Agency would be 827 hours at a cost of \$36,000 (including travel expenses) per year. The minimum burden is calculated for affected facilities in 5 States for the first year. The minimum burden is reduced to affected facilities in two States for the second year and no states are affected in the third year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

#### C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA and OMB determined that this regulatory action is "not significant" under Executive Order 12866. The proposed Federal plan would simply implement the 1995 guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405).

#### D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be \$100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (see 60 FR 65405 to 65412).

The EPA has determined that the proposed Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 emission guidelines. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

#### E. Regulatory Flexibility Act (RFA)

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). This proposed Federal plan would not establish any new requirements; therefore, pursuant to the provisions of

5 U.S.C. 605(b), EPA certifies that this Federal plan will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

#### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: January 14, 1997.

**Carol M. Browner,**  
Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Amend § 62.02 by revising paragraph (a) and adding paragraph (g) to read as follows:

##### § 62.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans for the control of pollutants and facilities under section 111(d), and section 129 as applicable, of the Act, and the Administrator's promulgation of such plans or portions of plans thereof. Approval of a plan or any portion of a plan is based on a determination by the Administrator that it meets the requirements of section 111(d), and section 129 as applicable, of the Act and provisions of part 60 of this chapter.

\* \* \* \* \*

(g) Substitute plans promulgated by the Administrator for States that do not have approved plans are contained in separate subparts that appear after the subparts for States. These Federal plans include sections identifying the applicability of the plan, emission limits, compliance schedules, recordkeeping and reporting, performance testing, and monitoring requirements.

3. Amend subpart A by adding § 62.13.

##### § 62.13 Federal plans.

The Federal plans apply to owners and operators of affected facilities that are not covered by an approved State plan, are located in any State for which a State plan has not been approved, or are located in any State whose State plan has been vacated in whole or in part. Affected facilities are defined in each Federal plan.

(a) The Federal plan for municipal waste combustors is contained in subpart FFF of this part.

(b) Landfills Federal plan. [Reserved]

(c) Medical waste incinerator Federal plan. [Reserved]

4. Amend part 62 by adding and by reserving subparts DDD and EEE as follows:

##### Subpart DDD—[Reserved]

##### Subpart EEE—[Reserved]

5. Amend part 62 by adding subpart FFF consisting of §§ 62.14100 through 62.14109 to read as follows:

##### Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

Sec.

62.14100 Scope.

62.14101 Definitions.

62.14102 Affected facilities.

62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

62.14104 Requirements for municipal waste combustor operating practices.

62.14105 Requirements for municipal waste combustor operator training and certification.

62.14106 Emission limits for municipal waste combustor fugitive ash emissions.

62.14107 Emission limits for air curtain incinerators.

62.14108 Compliance schedules.

62.14109 Reporting and recordkeeping, and compliance and performance testing.

Table 1 of Subpart FFF—Units Excluded From Subpart FFF

Table 2 of Subpart FFF—Nitrogen Oxides Requirements for Affected Facilities

Table 3 of Subpart FFF—Municipal Waste Combustor Operating Requirements

Table 4 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Pre-1987)

Table 5 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Post-1987)

Table 6 of Subpart FFF—Site-specific Compliance Schedules and Increments of Progress

##### Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

##### § 62.14100 Scope.

This subpart contains emission requirements and compliance schedules for the control of pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and 40 CFR part 60, subpart B. This municipal waste combustor Federal plan applies to each affected facility as defined in § 62.14102 that is not covered by a currently approved State plan.

##### § 62.14101 Definitions.

Terms used but not defined in this subpart have the meaning given to them in the Clean Air Act and 40 CFR part 60, subparts A, B, and Eb.

*Contract* means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

*De-rate* means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 250 tons per day of municipal solid waste. A permit restriction or a change in operation does not qualify as de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

*Municipal waste combustor plant* means one or more affected facilities (as defined in § 62.14102) at the same location.

*Protectorate* means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

*State* means any of the 50 United States and the protectorates of the United States.

*State plan* means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cb.

##### § 62.14102 Affected facilities.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a capacity to combust greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994, in all States and protectorates except for the affected facilities listed in table 1 of this subpart. Notwithstanding the exclusions in table 1 of this subpart applies to affected facilities in any State that does not have a State plan currently approved.

(b) A municipal waste combustor unit regulated by an EPA approved State plan is not regulated by this subpart.

(c) Any municipal waste combustor unit that has the capacity to combust more than 250 tons per day of municipal solid waste and is subject to a Federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than or equal to 11 tons per day is not subject to this subpart if the owner or operator:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with the emission requirements of this subpart are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR part 60, subpart Ea or subpart Eb.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the EPA Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under 40 CFR 60.51b of subpart Eb that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under 40 CFR 60.51b of subpart Eb, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 62.14107, and the testing procedures and the reporting and recordkeeping provisions under § 62.14109.

(l) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b of subpart Eb) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) Cement kilns firing municipal solid waste are not subject to this subpart.

**§ 62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.**

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: particulate matter in excess of 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen;

and opacity in excess of 10 percent (6-minute average).

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: cadmium in excess of 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and lead in excess of 0.44 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain municipal waste combustor organics, expressed as total mass dioxins/furans, in excess of the emission limits specified in either paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) The emission limit for affected facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) The emission limit for affected facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of the emission limits listed in table 2 of this subpart for affected facilities. Table 2 of this subpart provides emission limits for the nitrogen oxides concentration level for each type of affected facility.

**§ 62.14104 Requirements for municipal waste combustor operating practices.**

(a) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits listed in table 3 of this subpart. Table 3 provides emission limits for the carbon monoxide concentration level for each type of affected facility.

(b) The owner or operator of an affected facility must comply with the municipal waste combustor operating practice requirements listed in 40 CFR 60.53b (b) and (c).

**§ 62.14105 Requirements for municipal waste combustor operator training and certification.**

The owner or operator of an affected facility must comply with the municipal waste combustor operator training and certification requirements listed in paragraphs (a) through (g) of this section. For affected facilities, compliance with the municipal waste combustor operator training and certification requirements specified under paragraphs (a) through (d), and (g) of this section must be no later than 12 months after the effective date of this subpart.

(a) Each chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers [QRO-1-1994 (incorporated by reference—see 40 CFR 60.17(h)(1) of subpart A)] or a State certification program in Connecticut and Maryland (if the affected facility is located in the respective State).

(b) Each chief facility operator and shift supervisor must have completed full certification or must have scheduled a full certification exam with either the American Society of Mechanical Engineers [QRO-1-1994 (incorporated by reference—see 40 CFR 60.17(h)(1) of

subpart A)] or a State certification program in Connecticut and Maryland (if the affected facility is located in the respective State).

(c) The owner or operator of an affected facility must not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility: A fully certified chief facility operator; a provisionally certified chief facility operator who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart; a fully certified shift supervisor; or a provisionally certified shift supervisor who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart. If one of the persons listed in this paragraph must leave the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in this paragraph.

(d)(1) Each chief facility operator, shift supervisor, and control room operator at an affected facility must complete the EPA municipal waste combustor operator training course or the State municipal waste combustor operator training course in Connecticut (if the affected facility is located in Connecticut).

(2) The requirement specified in this paragraph does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart. The owner or operator of an affected facility may request that the EPA Administrator waive the requirement specified in this paragraph for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(e) The owner or operator of an affected facility must develop and update on a yearly basis a site-specific operating manual that must, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Procedures for municipal waste combustor unit startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility must establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section must undergo initial training no later than the date specified in paragraph (f)(1)(i) or (f)(1)(ii) of this section, whichever is later.

(i) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(ii) The date 12 months after the effective date of this subpart.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section must be kept in a readily accessible location for each person required to undergo training under paragraph (f) of this section. The operating manual and records of training must be available for inspection by the EPA or its delegated enforcement agency upon request.

**§ 62.14106 Emission limits for municipal waste combustor fugitive ash emissions.**

(a) The owner or operator of an affected facility must not cause to be discharged to the atmosphere from that affected facility visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (*i.e.*, 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k) of subpart

Eb, except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

#### **§ 62.14107 Emission limits for air curtain incinerators.**

The owner or operator of an air curtain incinerator with the capacity to combust greater than 250 tons per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials must not (at any time) cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

#### **§ 62.14108 Compliance schedules.**

(a) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) to retrofit air pollution control devices to meet the emission limits of this subpart. As specified in 40 CFR part 60, subpart B, the compliance schedules and increments of progress apply to each owner or operator of an affected facility who is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits specified in this subpart.

(1) Submit a final control plan according to the requirements of § 62.14109(g).

(2) Award contract(s): Award contract(s) to initiate on-site construction, initiate on-site installation of emission control equipment, or incorporate process changes. The owner or operator must submit a signed copy of the contract(s) awarded according to the requirements of § 62.14109(h).

(3) Initiate on-site construction: Initiate on-site construction, initiate on-site installation of emission control equipment, or initiate process changes needed to meet the emission limits as outlined in the final control plan.

(4) Complete on-site construction: Complete on-site construction and

installation of emission control equipment or complete process changes.

(5) Achieve final compliance: Incorporate all process changes or complete retrofit construction as designed in the final control plan and connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line, all necessary process changes or air pollution control equipment are operating fully. Within 180 days after the date the affected facility is required to achieve final compliance, the initial performance test must be conducted. On and after the date the initial performance test is completed or is required to be completed, whichever is earlier, no pollutant may be discharged into the atmosphere from the affected facility in excess of the emission limits of this subpart.

(b) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraphs (b)(1) through (b)(4) of this section, except as provided in paragraphs (c), (d), and (e) of this section.

(1) The owner or operator of an affected facility that commenced construction, modification, or reconstruction on or before June 26, 1987 and will take longer than 1 year after [date of publication of final rule] (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required) to comply with the emission limits of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(2) The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve the increments of progress according to the schedule in table 5 of this subpart to comply with the emission limits of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(3) The owner or operator of each specified affected facility in table 6 of this subpart must achieve the increments of progress according to the schedule in table 6 of this subpart.

(4) For affected facilities that are subject to the schedule requirements of paragraph (b)(1) or (b)(2) of this section, the owner or operator (or the State air pollution control authority) may submit for approval alternative dates for

achieving increments 2, 3, and 4. The owner or operator that is submitting these alternative dates must meet the reporting requirements of § 62.14109(l).

(c) The owner or operator of an affected facility that has ceased operation but will reopen prior to the applicable final compliance date specified in paragraphs (b)(1) through (b)(4) of this section must meet the same compliance dates and increments of progress specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility that has ceased or ceases operation of an affected facility and restarts the affected facility after the compliance dates specified in paragraphs (b)(1) through (b)(4) of this section must comply with the emission limits, requirements for combustor operating practices, and operator training and certification requirements of this subpart upon the date the affected facility restarts. The initial performance tests required by § 62.14109(c) must be conducted within 180 days after the date the unit restarts.

(e) The owner or operator of an affected facility that will be de-rated prior to the applicable final compliance date instead of complying with the emission limits of this subpart must meet the same increments of progress and achieve the de-rating by the final compliance date (specified in paragraphs (b)(1) through (b)(4) of this section) that would be applicable to the affected facility if it did not de-rate. The owner or operator of an affected facility that will be de-rated must meet the reporting requirements of § 62.14109(j). After de-rating is accomplished, the municipal waste combustor affected facility is no longer subject to this subpart.

#### **§ 62.14109 Reporting and recordkeeping and compliance and performance testing.**

(a) The owner or operator of an affected facility must comply with the reporting and recordkeeping provisions listed in 40 CFR 60.59b, except as provided in paragraphs (a)(1) through (a)(3) of this section.

(1) The siting requirements under 40 CFR 60.59b(a), (b)(5), and (d)(11) and the notification of construction requirements under 40 CFR 60.59b (b) and (c) do not apply.

(2) 40 CFR 60.54b and 60.56b of Subpart Eb do not apply to this subpart (see §§ 62.14105 and 62.14107 of this subpart).

(b) The owner or operator of an affected facility must comply with the compliance and performance testing

methods and procedures listed in 40 CFR 60.58b of Subpart Eb, except as provided in paragraphs (c) and (d) of this section.

(c) The initial performance test must be completed within 180 days after the date of final compliance specified in § 62.14108, rather than the date for the initial performance test specified in 40 CFR 60.58b of Subpart Eb.

(d) The owner or operator of an affected facility may follow the alternative performance testing schedule for dioxin/furan emissions specified in 40 CFR 60.58b(g)(5)(iii) if all performance tests for all affected facilities at the MWC plant over a 2-year period indicate that dioxin/furan emissions are less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen (instead of 7 nanograms specified in § 60.58b(g)(5)(iii) of Subpart Eb).

(e) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart must submit notification to the EPA Regional Office within 10 business days of completing each increment. Each notification must indicate which increment of progress specified in § 62.14108 (a)(1) through (a)(5) has been achieved. The notification must be signed by the owner or operator of the affected facility.

(f) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart who fails to meet any increment of progress specified in § 62.14108 (a)(1) through (a)(5) according to the applicable schedule in § 62.14108 must submit notification to the EPA Regional Office within 10 business days of the applicable date in § 62.14108 that the owner or operator failed to meet the increment.

(g) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart must submit a final control plan by the date specified in § 62.14108(b) with the notification required by § 62.14109(e). The final control plan must, at a minimum, include the items in paragraphs (g)(1) through (g)(4) of this section.

(1) A complete analysis of the applicable regulatory requirements and methods of compliance and selected control technology options available to meet the requirements.

(2) A description of the air pollution control devices or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(3) Engineering specifications and drawings of the air pollution control equipment and/or process changes that will be employed to comply with the emission limits and other requirements of this subpart.

(4) The same information that will be used to solicit bids to install the air pollution control devices or initiate the process changes.

(h) The owner or operator of an affected facility that is taking longer than 1 year after [date of publication of the final rule] to comply with the emission limits of this subpart must submit a signed copy of the contract or contracts awarded according to the requirements of § 62.14108(a)(2) with the notification required by § 62.14109(e).

(i) The owner or operator of an affected facility that plans to cease operation of an affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the applicable compliance date specified in § 62.14108 must submit a notification by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) through (b)(4), as applicable. (Affected facilities that cease operation on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 are not required to submit a final control plan.) The notification must state the date by which the affected facility will cease operation. If the cease operation date is later than 1 year after [date of publication of the final rule], the owner or operator must enter into a legally binding closure agreement with EPA by the date the final control plan is due. The agreement must specify the date by which operation will cease.

(j) The owner or operator of an affected facility that plans to de-rate the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 must submit a final control plan as required by paragraph (g) of this section and submit notification of increments of progress as required by paragraphs (e) and (f) of this section and § 62.14108(e) of this subpart.

(1) The final control plan must contain the information in paragraphs (j)(1)(i) through (j)(1)(iv) of this section

rather than the information in paragraph (g)(1) through (g)(4) of this section.

(i) A description of the physical changes that will be made to accomplish the de-rating.

(ii) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the de-rating. (See the procedures specified in 40 CFR 60.58b(j) of Subpart Eb for calculating municipal waste combustor unit capacity.)

(iii) Engineering specifications and drawings of the physical changes that will be made to accomplish the de-rating.

(iv) The same information that will be used to solicit bids to initiate the physical changes.

(2) The owner or operator must submit a signed copy of the contract or contracts awarded to initiate the de-rating with the notification required by paragraph (e) of this section.

(k) The owner or operator of an affected facility that is ceasing operation more than 1 year following [date of publication of the final rule] must submit performance test results by the date 1 year after the [date of publication of the final rule] for dioxin/furan emissions conducted during or after 1990 for each affected facility. The performance test shall be conducted according to the procedure in paragraph (b) of this section.

(l) The owner or operator (or the State air pollution control authority) that is submitting alternative dates for increments 2, 3, and 4 according to § 62.14108(b)(4) must submit the alternative dates by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) and (b)(2), as applicable. The owner or operator must also submit the alternative dates to the State.

#### Tables to Subpart FFF

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF

State	MWC units
Oregon .....	MWC units at the following MWC sites: (a) Ogden Martin Systems, Marion County Oregon. (b) Coos County, Coos Bay, Oregon.
Florida .....	All affected facilities, as defined in § 62.14102, located in Florida.

TABLE 2 OF SUBPART FFF—NITROGEN OXIDES REQUIREMENTS FOR AFFECTED FACILITIES

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume) <sup>a</sup>
Mass burn waterwall .....	205.
Mass burn rotary waterwall .....	250.
Refuse-derived fuel combustor .....	250.
Fluidized bed combustor .....	180.
Mass burn refractory combustors .....	No limit.

<sup>a</sup>Corrected to 7 percent oxygen, dry basis.

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) <sup>a</sup>	Averaging time (hrs) <sup>b</sup>
Mass burn waterwall .....	100	4
Mass burn refractory .....	100	4
Mass burn rotary refractory .....	100	24
Mass burn rotary waterwall .....	250	24
Modular starved air .....	50	4
Modular excess air .....	50	4
Refuse-derived fuel stoker .....	200	24
Bubbling fluidized bed combustor .....	100	4
Circulating fluidized bed combustor .....	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor .....	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor .....	200	24

<sup>a</sup>Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.

<sup>b</sup>Averaging times are 4-hour or 24-hour block averages.

TABLE 4 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS (PRE-1987)<sup>a, b</sup>

Affected facilities	Submit final control plan	Award contracts	Begin on-site construction	Complete on-site construction	Final compliance
	Increment 1	Increment 2	Increment 3	Increment 4	Increment 5
Affected facilities that commenced construction, modification, or reconstruction on or before June 26, 1987 (All pollutants).	[Insert date 240 days after publication in the <b>Federal Register</b> ].	[Insert date 480 days after publication in the <b>Federal Register</b> ].	[Insert date 660 days after publication in the <b>Federal Register</b> ].	11/19/00	12/19/00

<sup>a</sup>Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.

<sup>b</sup>As an alternative to this schedule, the owner or operator may close the affected facility by December 19, 2000, complete the retrofit while the affected facility is closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS (POST-1987)<sup>a, b</sup>

Affected facilities	Submit final control plan	Award contracts	Begin on-site construction	Complete on-site construction	Final compliance
	Increment 1	Increment 2	Increment 3	Increment 4	Increment 5
Affected facilities that commenced construction modification, or reconstruction after June 26, 1987:					
1. Emission limits for Hg, dioxin/furan.	NA <sup>c</sup> .....	NA <sup>c</sup> .....	NA <sup>c</sup> .....	NA <sup>c</sup> .....	1 year after promulgation of this subpart or 1 year after permit issuance. <sup>d</sup>

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS (POST-1987)<sup>a, b—</sup>  
Continued

Affected facilities	Submit final control plan	Award contracts	Begin on-site construction	Complete on-site construction	Final compliance
	Increment 1	Increment 2	Increment 3	Increment 4	Increment 5
2. Emission limits for SO <sub>2</sub> , HCl, PM, Pb, Cd, opacity CO, NO <sub>x</sub> .	[Insert date 240 days after publication in the FEDERAL REGISTER].	[Insert date 480 days after publication in the FEDERAL REGISTER].	[Insert date 660 days after publication in the FEDERAL REGISTER].	11/19/00 .....	12/19/00.

<sup>a</sup>Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.

<sup>b</sup>As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

<sup>c</sup>Because final compliance is achieved in 1 year, no increments of progress are required.

<sup>d</sup>Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

Affected facilities at the following MWC sites	City, State	Submit final control plan	Award contracts	Begin construction	Complete on-site compliance	Final compliance
		Increment 1	Increment 2	Increment 3	Increment 4	Increment 5
Group A						
Savannah Energy Systems Co.	Savannah, Georgia.	NA .....	NA .....	NA .....	12/31/97 .....	02/28/98.
Nashville Thermal Transfer Corp.	Nashville, Tennessee.	NA .....	NA .....	NA .....	05/01/99 .....	07/01/99.
Group B <sup>a</sup>						
All large MWC units.	Maine .....	10/01/98 .....	01/01/99 .....	07/01/99 .....	09/01/00 .....	12/19/00.
Baltimore Resco ...	Baltimore, Maryland.	NA .....	NA .....	04/01/98 .....	09/01/00 .....	12/19/00.
Hennepin Energy Resource Corp.	Minneapolis, Minnesota.	NA .....	NA .....	NA .....	NA .....	04/30/98.
United Power Association.	Elk River, Minnesota.	NA .....	NA .....	12/30/99 .....	06/30/99 .....	12/19/00.
Northern States Power—Wilmarth.	Mankato, Minnesota.	10/30/98 .....	03/01/99 .....	09/01/99 .....	11/19/00 .....	12/19/00.
Northern States Power—Red Wing.	Red Wing, Minnesota.	01/30/99 .....	07/30/99 .....	04/30/00 .....	11/19/00 .....	12/19/00.
All large MWC units.	Michigan .....	03/01/99 .....	09/01/99 .....	12/01/99 .....	11/19/00 .....	12/19/00 <sup>b</sup> .
Any facility complying by use of NO <sub>x</sub> trading <sup>c</sup> .	New Jersey .....	12/15/99 .....	01/15/00 .....	03/15/00 .....	07/15/00 .....	12/19/00.
Westchester RESCO.	Westchester County, New York.	NA .....	NA .....	01/01/98 .....	12/19/00 .....	12/19/00.
Adirondack Resource Recovery Facility.	Hudson Falls, New York.	10/16/98 .....	01/15/00 .....	04/08/00 .....	11/14/00 .....	12/19/00.
Onandaga County Resource Recovery Facility.	Onandaga County, New York.	No date required <sup>d</sup>	No date required <sup>d</sup>	No date required <sup>d</sup>	No date required <sup>d</sup>	Within 1 year after State plan approval [or Federal plan promulgation].
Niagra Resource Recovery Facility.	Niagra Falls, New York.	No date required <sup>d</sup>	No date required <sup>d</sup>	No date required <sup>d</sup>	No date required <sup>d</sup>	Within 1 year after State plan approval [or Federal plan promulgation].
Huntington Resource Recovery Facility.	East Northport, New York.	10/01/99 .....	10/15/99 .....	03/15/00 .....	07/15/00 .....	08/01/00.
Babylon Resource Recovery Facility.	West Babylon, New York.	09/15/99 .....	10/15/99 .....	2/15/00 .....	07/01/00 .....	07/19/00.

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS—Continued

Affected facilities at the following MWC sites	City, State	Submit final control plan Increment 1	Award contracts Increment 2	Begin construction Increment 3	Complete on-site compliance Increment 4	Final compliance Increment 5
Hempstead Resource Recovery Facility.	Westbury, New York.	05/09/98 .....	TBD <sup>e</sup> .....	TBD <sup>e</sup> .....	TBD <sup>e</sup> .....	12/19/00.
Whellabrator Falls; Harrisburg Authority; American Ref-Fuel; Lancaster Resource Energy; Montenev Energy Resource of Montgomery County; York County Solid Waste and Refuse Authority.	Pennsylvania .....	3 months after issuance of FESOP <sup>f</sup> [or Federal plan promulgation].	3 months after issuance of FESOP <sup>f</sup> [or Federal plan promulgation].	18 months after issuance of FESOP <sup>f</sup> [or Federal plan promulgation].	30 months after issuance of FESOP <sup>f</sup> [or Federal plan promulgation].	12/19/00. <sup>g</sup>
I-95 Energy/Resource Recovery Facility.	Lorton, Virginia ....	06/01/98 .....	08/01/98 .....	12/01/98 .....	10/01/99 .....	11/01/99.
Alexandria/ Arlington Resource Recovery Facility.	Alexandria, Virginia.	06/01/98 .....	08/01/98 .....	12/01/98 .....	10/01/99 .....	11/01/99.

NA=not applicable; increment already met.

TBD=to be determined.

<sup>a</sup>The schedules from Group B have not been reviewed by EPA due to their recent arrival. They will be examined for acceptability at the same time as those received during the comment period of this proposal. All schedules contained in the final Federal plan will be reviewed and approved by EPA.

<sup>b</sup>For mercury and dioxins, combustors that commenced construction after June 26, 1987, must comply by 09/01/99 or within 12 months of issuance of permit to install, whichever is later.

[Note: 09/01/99 date may be modified to 1 year after Federal plan promulgation].

<sup>c</sup>Applies only to NO<sub>x</sub> emission limits. Other pollutants would follow Federal plan generic schedule.

<sup>d</sup>Because final compliance is achieved in 1 year, no increments of progress are required.

<sup>e</sup>The facility will propose these increments in the control plan to be submitted on 05/09/98.

<sup>f</sup>Pennsylvania is implementing their State plan through Federally Enforceable State Operating Permits (FESOP).

<sup>g</sup>Pennsylvania proposes 08/26/02 final compliance date for supplemental emission limits in 40 CFR 60, subpart Cb promulgated August 25, 1997. For mercury and dioxins, 1 year after State plan approval [or Federal plan promulgation] or 1 year after issuance of a revised permit if a permit modification is required.

[FR Doc. 98-1521 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51-5, 51-6, 51-8, 51-9, and 51-10

### Miscellaneous Amendments to Committee Regulations

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed rule.

**SUMMARY:** The Committee is proposing to make changes to its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The Committee is also proposing to make changes in its regulations to correct its

mailing address after a recent office move.

**DATES:** Submit comments on or before March 24, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

**FOR FURTHER INFORMATION CONTACT:** G. John Heyer (703) 603-0665. Copies of this notice will be made available on request in computer diskette format.

**SUPPLEMENTARY INFORMATION:** The Committee is proposing to amend 41 CFR 51-5.2 to add a new paragraph (e) to its mandatory source requirement. The new paragraph will require Government contracting activities which have bundled JWOD services into larger contract requirements to require their prime contractors to contract with the JWOD nonprofit agencies for performance of those services. The provision would place the same

obligation on Government contracting activities and their prime contractors if the Committee added a bundled service to the Procurement List after the bundling occurred. A similar regulatory provision for JWOD commodities appears at 41 CFR 51-5.2(c).

The Committee is also proposing a set of regulatory revisions to create a provision (new 41 CFR 51-6.14) for addition of replacement services to the Procurement List, similar to the provision at 41 CFR 51-6.13 on replacement commodities. This new provision is a response to service relocations which are part of current Government downsizing initiatives.

Lastly, the Committee is proposing to amend those provisions of its regulations which state its mailing address, as the address changed in November 1997. The provisions appear in the Committee's Freedom of Information Act, Privacy Act, and nondiscrimination regulations at 41 CFR

parts 51–8, 51–9, and 51–10 respectively.

### Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

### Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

### Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

### List of Subjects

#### 41 CFR Parts 51–5 and 51–6

Government procurement, Individuals with disabilities.

#### 41 CFR Part 51–8

Freedom of information.

#### 41 CFR Part 51–9

Privacy.

#### 41 CFR Part 51–10

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

For the reasons set out in the preamble, parts 51–5, 51–6, 51–8, 51–9 and 51–10 of Title 41, Chapter 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 51–5 and 51–6 continues to read as follows:

**Authority:** 41 U.S.C. 46–48c.

### PART 51–5—CONTRACTING REQUIREMENTS

2. Add new paragraph (e) to § 51–5.2 to read as follows:

#### § 51–5.2 Mandatory source requirement.

\* \* \* \* \*

(e) Contracting activities procuring services which have included within them services on the Procurement List shall require their contractors for the larger service requirement to procure

the included Procurement List services from nonprofit agencies designated by the Committee.

3. Revise the first sentence of paragraph (b) of § 51–5.3 to read as follows:

#### § 51–5.3 Scope of requirement.

\* \* \* \* \*

(b) For services, where an agency and location or geographic area are listed on the Procurement List, only the service for the location or geographic area listed must be procured from the nonprofit agency, except as provided in § 51–6.14 of this chapter. \* \* \*

\* \* \* \* \*

### PART 51–6—PROCUREMENT PROCEDURES

4. Redesignate § 51–6.14 as § 51–6.15.

5. Add new § 51–6.14 to read as follows:

#### § 51–6.14 Replacement services.

If a service is on the Procurement List to meet the needs of a Government entity at a specific location and the entity moves to another location, the service at the new location is automatically considered to be on the Procurement List if a qualified nonprofit agency is available to provide the service at the new location, unless the service at that location is already being provided by another contractor. If the service at the new location is being provided by another contractor, the service will not be on the Procurement List unless the Committee adds it as prescribed in part 51–2 of this chapter. If another Government entity moves into the old location, the service at that location will remain on the Procurement List to meet the needs of the new Government entity.

### PART 51–8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

6. The authority citation for Part 51–8 continues to read as follows:

**Authority:** 5 U.S.C. 552.

#### §§ 51–8.4 and 51–8.5 [Amended]

7. Remove the words “Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461” and add, in their place, the words “Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302” in the following places:

- a. Section 51–8.4; and
- b. Section 51–8.5(a).

### PART 51–9—PRIVACY ACT RULES

8. The authority citation for Part 51–9 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

#### §§ 51–9.401 and 51–9.405 [Amended]

Remove the words “Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461” and add, in their place, the words “Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302” in the following places:

- a. Section 51–9.401(a); and
- b. Section 51–9.405(a).

### PART 51–10—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

10. The authority citation for part 51–10 continues to read as follows:

**Authority:** 29 U.S.C. 794.

#### § 51–10.170 [Amended]

11. In § 51–10.170, remove the words “Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461” and add, in their place, the words “Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302” in paragraph (c).

Dated: January 20, 1998.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98–1625 Filed 1–22–98; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 2360

RIN 1004–AC79

[WO–130–1820–00 24 1A]

#### National Petroleum Reserve, Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Bureau of Land Management (BLM) is withdrawing a rule that proposed removing sections of 43 CFR part 2360. The proposal was published in the **Federal Register** on October 23, 1996, and would have removed all of part 2360 except for provisions dealing with use authorizations. BLM had proposed to remove the regulations because we thought they were repetitive of statutory language or obsolete.

**FOR FURTHER INFORMATION CONTACT:** Frank Bruno, Regulatory Affairs Group (WO-630), Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, N.W., Washington, DC 20240; telephone (202) 452-0352 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** BLM published the proposed rule on October 23, 1996, at 61 FR 54977-54978. The comment period closed on November 22, 1996, and we received only one public comment letter. Because of the National Petroleum Reserve-Alaska Environmental Impact Statement planning project that is currently underway, BLM decided to withdraw the proposed rule, and will take no further action on the proposal.

Dated: January 15, 1998.

**Sylvia V. Baca,**

*Deputy Assistant Secretary, Land and Minerals Management*

[FR Doc. 98-1597 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-84-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 980113013-8013-01; I.D. 122397I]

RIN 0648-AK56

#### Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Control Date

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; consideration of a control date.

**SUMMARY:** This notice announces that persons who, after November 13, 1997, enter the pelagic longline fishery in American Samoa will not necessarily be assured of eligibility for continuing participation in the fishery if, in the future, the Western Pacific Fishery Management Council (Council) prepares and NMFS approves a program limiting entry or effort. This notice also announces that vessels greater than 50 ft (15.2 m) in length that are registered for use with Federal general longline permits after November 13, 1997, would not be assured of being allowed to use longline gear to fish for pelagic

management unit species within 100 nautical miles (nm) from the coast lines of American Samoa. This notice does not commit the Council to limit effort, nor does it prevent any other date from being selected for eligibility to participate in the fishery. The Council also may use other criteria to limit fishing effort associated with the proposed area closure around American Samoa.

**DATES:** Comments must be submitted by February 23, 1998.

**ADDRESSES:** Submit comments to the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 92813.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (909) 522-8220, or Mr. Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS (808) 973-2985.

**SUPPLEMENTARY INFORMATION:** The pelagic fishery in American Samoa is undergoing rapid change. Prior to 1995 it was largely a troll-based fishery. In late 1995 four vessels known locally as "alia" catamarans (about 30 ft (9.1 m) long powered by small gas outboard engines) began to fish for albacore using monofilament longline gear. During 1995, this artisanal-scale fishing operation landed 54,902 lb (24.903 metric tons (mt)) of albacore, a 97-percent increase in landings over the previous year. In 1996, 13 alias participated in the fishery and landed 232,721 lb (105.56 mt) of albacore. The number of longline vessels registered for the fishery increased to 32 in 1997, including four vessels ranging in length from 65 to 109 ft (19.8 to 33.2 m). In 1996, a total of 99,990 hooks were set in the fishery. By the third quarter of 1997, a total of 175,081 hooks had been set in the fishery.

In June 1997, fishermen in American Samoa formed a small boat working group to discuss possible management approaches to prevent destabilization and overcapitalization in the fishery. At the 94th meeting held in November 1997, after consulting with the group, Council members from American Samoa presented the Council with two recommendations: (1) Establish a "control date" (potential cut-off date) for permit eligibility if the Council decides to develop a limited entry program and (2) prepare a regulatory amendment under the framework process of the Fishery Management Plan for Pelagic Species Fisheries in the

Western Pacific Region to establish a 100-nm area around American Samoa closed to longline fishing by vessels longer than 50 ft (15.2 m) that were not already in the fishery. Vessels greater than 50 ft (15.2 m) in length registered with a general longline permit after the control date would not be allowed to continue to fish within the closed area. The Council approved the establishment of a control date (November 13, 1997) for a limited entry program and directed staff to prepare a regulatory amendment to establish a 100-nm area closed to longline fishing.

This decision by the Council rescinds the earlier control date for this fishery of January 1, 1991, published in the **Federal Register** on March 28, 1991 (56 FR 1289).

The Council believes that there is a risk of speculative entry into the fishery while the Council further evaluates the potential benefits and costs of limited entry alternatives and the proposed regulatory amendment for area closure, including enforcement concerns. The control date is designed to discourage speculative entry during this period of analysis. The control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the American Samoa longline fishery. Fishermen are not guaranteed future participation in this fishery, regardless of their entry date or level of participation before or after the control date. The Council may choose a different control date or it may choose a management regime that does not involve a control date. Other criteria, such as documentation of commercial landings and sales, may be used to determine eligibility for participation in the fishery. At its 95th meeting in April 1998, the Council may also consider prohibiting other U.S. pelagic non-longline fishing vessels (purse-seiners, trollers, and pole-and-line bait boats) greater than 50 ft (15.2 m) from fishing within 100-nm of the land masses of American Samoa. The Council also may choose to take no further action to control entry or access to the fishery or to establish a closed longline fishing area.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 14, 1998.

**Rolland A. Schmitten,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 98-1546 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-22-F

# Notices

**Federal Register**

Vol. 63, No. 15

Friday, January 23, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### Notice of Intent To Grant Exclusive License; Correction Notice

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Correction to Notice of intent to grant exclusive license.

**SUMMARY:** In notice document published in the issue of Wednesday, December 31, 1997 (62 FR 68248), the location of the grantee (Integrated BioControl Systems, Inc.) was omitted. In addition, the publication date of the FR Notice of Availability was erroneous. This notice corrects the exclusive grant license information to Serial No. 08/863,261 as follows:

On page 68248, in the first column, first paragraph of the USDA notice, include the location of Aurora, Indiana, for Integrated BioControl Systems, Inc. The **Federal Register** publication date for the Notice of Availability for Serial No. 08/404,779 was specified as May 27, 1997. The date should be changed to May 27, 1995.

Dated: January 15, 1998.

**Richard M. Parry, Jr.,**  
Assistant Administrator.

[FR Doc. 98-1623 Filed 1-22-98; 8:45 am]

BILLING CODE 3410-03-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Threemile Area Timber Sales and Other Projects, Colville National Forest, Pend Oreille County, Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation of an environmental impact statement.

**SUMMARY:** On January 18, 1990, a Notice of Intent (NOI) to prepare an

environmental impact statement (EIS) for the Threemile Area Timber Sales and Other Projects on the Sullivan Lake Ranger District of the Colville National Forest was published in the **Federal Register** (55 FR 1687). A Notice of Availability for the draft EIS was published in the **Federal Register** on August 14, 1992 (57 FR 36647). The comment period on the draft EIS ended October 1, 1992. Forest Service has decided to cancel the environmental analysis process. There will be no final EIS for this project at this time. The NOI is hereby rescinded.

#### FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this cancellation to Connie Smith, Environmental Coordinator, Colville National Forest, 765 South Main, Colville, Washington 99114 or telephone 509-684-7185.

Dated: January 8, 1998.

**Robert L. Vaught,**

Forest Supervisor.

[FR Doc. 98-1602 Filed 1-22-98; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID918-1610-00-UCRB]

#### Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana, Wyoming, Utah, and Nevada and the Northern, Intermountain, and Pacific Northwest Regions

**AGENCIES:** Forest Service, USDA; Bureau of Land Management, USDI.

**ACTION:** Notice of extension of comment period for draft environmental impact statements (EISs).

**SUMMARY:** On June 12, 1997, the Forest Service and the Bureau of Land Management published a notice of availability of two draft EISs in the **Federal Register** (62 FR 32076). That notice stated that a 120-day comment period was provided for the Eastside Draft EIS and for the Upper Columbia River Basin Draft EIS. On September 5, 1997, a second notice (62 FR 46941) extended the comment period to

February 6, 1998. This notice is to inform interested parties that the comment period has been extended again to provide for public review of, and comment on, an economic and social report prepared in response to a requirement of the Department of the Interior and Related Agencies Appropriations Act of 1998.

**DATES:** Comments on the two draft EISs and on the economic and social report must now be submitted or postmarked no later than April 6, 1998.

**ADDRESSES:** Copies of the economic and social report will be mailed in mid-February to everyone on the mailing list for the Eastside and Upper Columbia River Basin Draft EISs. Interested parties not on the mailing list can obtain a copy from ICBEMP, 112 E. Poplar Street, Walla Walla, WA 99362 or by calling (509) 522-4030 or from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334-1770, ext. 120. The economic and social report will also be available via the internet (<http://www.icbemp.gov>).

Comments on the Eastside draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362. Comments on the Upper Columbia River Basin draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702. If your comments are in regard to both draft EISs, they may be sent to either office. Comments may also be made electronically by accessing the Project home page (<http://www.icbemp.gov>), where a comment form is available. If you have already submitted your comments, you may now submit more comments on the draft EISs, including your comments regarding the economic and social report.

**FOR FURTHER INFORMATION CONTACT:** EIS Team Leader Jeff Walter, 304 N. 8th Street, Room 250, Boise, ID 83702, telephone (208) 334-1770 or EIS Deputy Team Leader Cathy Humphrey, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362, telephone (509) 522-4030.

**SUPPLEMENTARY INFORMATION:** In Section 323 of the Department of the Interior and Related Agencies Appropriations Act of 1998 Pub. L. 105-83, the United States Congress directed the following: "Using all research information

available from the area encompassed by the Project, the Secretaries [of Agriculture and the Interior], to the extent practicable, shall analyze the economic and social conditions, and culture and customs, of the communities at the sub-basin level within the Project area and the impacts the alternatives in the draft EISs will have on those communities. This analysis shall be published on a schedule that will allow a reasonable period of time for public comment thereon prior to the close of the comment periods on the draft EISs. The analysis, together with the response \* \* \* to the public comment, shall be incorporated in the final EISs and \* \* \* subsequent decisions related thereto."

The required analysis has been prepared. It is a report on the existing economic and social conditions at the community level within the Interior Columbia Basin Ecosystem Management Project area and, to the extent practicable, an analysis of the effects of the alternatives described in the draft EISs upon communities. This report will be distributed to the public by mid-February, providing approximately seven weeks for review and comment before the comment period closes April 6, 1998.

Dated: January 16, 1998.

**Martha Hahn,**

*Director, Bureau of Land Management.*

Dated: January 16, 1998.

**Jack Blackwell,**

*Regional Forester, U.S. Forest Service.*

[FR Doc. 98-1603 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-11-M, 4310-GG-M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** February 23, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On October 3 and November 28, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 51827 and 63314) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

### Grounds/Garage Maintenance

Veterans Affairs Medical Center, 1601 Perdido Street, New Orleans, Louisiana

### Janitorial/Custodial

Naval Command Control & Ocean Surveillance Center, East Coast Division Complex (trailers/laboratories), Charleston, South Carolina

Operation of Postal Service Center, Luke Air Force Base, Arizona.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Beverly L. Milkman,**  
*Executive Director.*

[FR Doc. 98-1621 Filed 1-22-98; 8:45 am]

BILLING CODE 6353-01-P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** February 23, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Commodities

Pen, Executive, Twist Retractable

7520-01-451-2274

7520-01-451-2275

7520-01-451-2276

7520-01-451-2279

NPA: Industries for the Blind, Inc.,

Milwaukee, Wisconsin,

Infantry Kit, Cold Weather, Marine

Corps, 8465-00-NSH-0029,

(Requirements for the U.S. Army Soldier Systems Command),

NPA: Pioneer Adult Rehabilitation

Center Davis County School District,

Clearfield, Utah.

#### Services

Grounds Maintenance, Credit Union, Building 2680, Edwards Air Force Base, California, NPA: Desert Haven Enterprises, Inc., Lancaster, California.

Janitorial/Custodial, C.W. Whittlesey

U.S. Army Reserve Center, 200 Barker Road, Pittsfield, Massachusetts,

NPA: Berkshire County Arc, Inc.,

Pittsfield, Massachusetts.

Janitorial/Custodial, Buildings 1000,

1001, 1002, 20129, 20130, 20168,

20200, 20201, 20206, 20227, 20228,

20375, 20405, 20410, 20412, 20414,

20420, 20449, 20451, 20600, 20673,

20674, 20675, 20676, 20678-20683,

20687, 20707, 48025, 57001, 57011,

66001, 66006, 66014, 66017, 66029,

66041, 66047, 66049, 66071, 20202D,

20451A-J and 20602ABD, Kirtland

Air Force Base, New Mexico, NPA:

RCI, Inc., Albuquerque, New Mexico.

Janitorial/Custodial, Buildings 201, 381,

460, 467, 482, 585, 605, 617, 618, 619,

702, 760, 760-3, 762, 763, 765, 915,

926, 945, 996, 1010, 1013, 1015, 1025,

1032, 1037, 1048, 1049, 7906, 20216,

20219, 20220, 20226, 20234, 20360-

20364, 20369, 20724, 20749, 20752,

20754, 22004, 27494, 30117, 30134

and 30136, Kirtland Air Force Base,

New Mexico, NPA: Adelante

Development Center, Inc.,

Albuquerque, New Mexico.

#### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cloth, Wiping

6532-LL-N83-0490

6532-LL-N83-0491

7920-LL-L03-6103

7920-LL-L03-6134

7920-LL-L01-0013

7920-LL-L01-0014

7930-00-NSH-0003

7930-00-NSH-0004

7930-00-NSH-0005

7930-LL-C00-3782

7930-LL-C00-2768

8305-LL-N01-7278

Napkin, Paper

8540-00-149-1601.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98-1622 Filed 1-22-98; 8:45 am]

BILLING CODE 6353-01-P

#### COMMISSION ON CIVIL RIGHTS

##### Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on Monday, February 9, 1998, at the Providence Public Library, North Meeting Room, 225 Washington Street, Providence, Rhode Island 02903. The purpose of the meeting is to hold a consultation to gather information for its project, "An

Examination of the Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island." The Committee has invited community representatives and immigrant rights organizations, State and local officials, and the State congressional delegation to brief the Committee on this topic.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert Lee, 401-863-1693, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 16, 1998.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 98-1666 Filed 1-21-98; 10:21 am]

BILLING CODE 6335-01-P

#### DEPARTMENT OF COMMERCE

##### Bureau of Export Administration

##### Action Affecting Export Privileges; Nishan Keval; In the Matter of: Nishan Keval, 2511 Sullivan Drive, Auburn, California 95603; Order Denying Permission To Apply for or Use Export Licenses

On September 25, 1995, Nishan Keval (Keval) was convicted in the United States District Court for the Southern District of California of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)) (IEEPA). Keval was convicted of knowingly and willfully exporting and causing to be exported from the United States to The Netherlands, for transshipment to the People's Republic of Libya, petrochemical-related equipment.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act),<sup>1</sup> provides that, at the discretion of the Secretary of

<sup>1</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997) continued the Export Administration Regulations in effect under IEEPA.

Commerce,<sup>2</sup> no person convicted of violating IEEPA, or certain other provisions of the United States code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (1997)), (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Keval's conviction for violating IEEPA and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Keval permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of eight years from the date of his conviction. The eight-year period ends on September 25, 2003. I have also decided to revoke all licenses issued pursuant to the Act in which Keval had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. Until September 25, 2003, Nishan Keval, 2511 Sullivan Drive, Auburn, California 95603, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering,

storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Keval by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations, where the

only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 25, 2003.

VI. A copy of this Order shall be delivered to Keval. This Order shall be published in the **Federal Register**.

Dated: January 9, 1998.

**Eileen M. Albanese,**

*Director, Office of Exporter Services.*

[FR Doc. 98-1574 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### **Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of New Shipper Antidumping Duty Administrative Review: Stainless Steel Bar from India.

**SUMMARY:** In response to requests from M/s Panchmahal Steels, Ltd. and Ferro Alloys Corporation Limited, the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order on stainless steel bar from India. This review covers M/s Panchmahal Steels, Limited's and Ferro Alloys Corporation Limited's sales of the subject merchandise to the United States during the period February 1, 1996 through January 31, 1997.

We have preliminarily determined that M/s Panchmahal Steels, Ltd.'s sales have been made below normal value and that Ferro Alloys Corporation Limited's sales have not been made below normal value. If these preliminary results are adopted in our final results of new shipper administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** January 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Craig Matney or Zak Smith, Office 1,

<sup>2</sup> Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-0588 or (202) 482-1279, respectively.

#### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 24 and February 27, 1997, the Department of Commerce ("the Department") received requests from respondents to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India produced by M/s Panchmahal Steels, Ltd. ("Panchmahal") and Ferro Alloys Corporation Limited ("Facor"), respectively. The Department published in the **Federal Register**, on March 28, 1997, a notice of initiation of a new shipper administrative review of Panchmahal and Facor covering the period August 1, 1996, through January 31, 1997 (62 FR 14886). On September 17, 1997, the Department published in the **Federal Register** a notice of extension of time limit for this new shipper administrative review (62 FR 48811). This notice extended the time for completion of these preliminary results to no later than January 14, 1998.

##### Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times

the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

##### Period of Review

This review covers two manufacturers/exporters, Panchmahal and Facor, and the period February 1, 1996 through January 31, 1997. The initiation notice incorrectly stated the period of review as August 1, 1996 through January 31, 1997.

##### Date of Sale

The Department's April 21, 1997, questionnaire instructed respondents to use the invoice date as date of sale. It further instructed respondent to contact the Department if the exporter believed that there was another situation present that would make using the date of invoice inappropriate. Facor made a written submission to the Department on June 9, 1997, claiming that the purchase order date was the appropriate date of sale, because that is the date on which the material terms of sale are set. On June 12, 1997, the Department agreed that Facor may report its sales to the United States based on purchase order date.

Petitioners objected to the Department's date of sale decision. Petitioners claimed that our decision in *Wire Rod from India* (62 FR 38976, July 21, 1997) allows only two exceptions (*i.e.*, sales made on the basis of long-term contracts and sales made with a long lag time) to the rule of using invoice date as date of sale, and that Facor did not meet either one. We conducted a further analysis of the information on the record and concluded that the purchase order date is the appropriate date of sale because the material terms of sale were set at this time and no material changes occurred between the purchase order date and the invoice date (*see*, Memorandum to Richard W. Moreland from Susan Kuhbach, November 14, 1997).

##### United States Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and constructed export price was not otherwise indicated.

We calculated EP based on either the CIF or cost and freight ("CFR") price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions for foreign inland freight and international freight.

Panchmahal claimed an upward adjustment to EP for a "duty drawback" program. In the preliminary results of the first administrative review of this order, we analyzed the functioning of this duty drawback program and found that it did not meet the Department's criteria for an upward adjustment to EP (*see*, 62 FR 10540 at 10541, March 7, 1997). We maintained our position in the final results (*see*, 62 FR 37030, July 10, 1997). We have reexamined the program in regard to Panchmahal, and have found no reason to deviate from our previous decision. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632 at 47635, September 10, 1997), "we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product." Because Panchmahal did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP.

##### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices

at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length*

*Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we reviewed information from each respondent regarding the marketing stage involved in the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting prices before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that the marketing process in both the home market and the United States were not substantially dissimilar for either Panchmahal or Facor. Therefore, we have preliminarily found that sales in both markets are at the same LOT and consequently no LOT adjustment is warranted.

#### Cost of Production Analysis

Based on a cost allegation presented by petitioners, the Department found reasonable grounds to believe or suspect that sales by Facor in the home market were made at the prices below their respective costs of production ("COPs"). As a result, the Department initiated an investigation to determine whether Facor made home market sales during the POR at prices below its COP, within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

#### A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication, selling, general and administrative expenses, and packing costs.

#### B. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Facor's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act. Moreover, based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that Facor made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

#### Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/exporter	Period	Margin (percent)
Panchmahal .....	2/1/96-1/31/97	0.69
Facor .....	2/1/96-1/31/97	.....

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which

must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 90 days of issuance of these preliminary results.

Upon completion of this new shipper administrative review, the Department

shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the

POR. In order to estimate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

The following deposit requirement will be effective upon publication of the final results of this new shipper antidumping duty administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value ("LTFV") investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(h).

Dated: January 13, 1998.

**Robert S. LaRussa,**  
Assistant Secretary for Import  
Administration.

[FR Doc. 98-1537 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-427-805]

#### **Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France; Notice of Court Decision and Suspension of Liquidation**

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On December 18, 1997, in *Usinor Sacilor v. United States*, Consol. Court No. 93-04-00230, a lawsuit challenging the Department of Commerce's final affirmative countervailing duty determination of certain hot-rolled lead and bismuth carbon steel products from France, the Court of International Trade affirmed the Department of Commerce's remand determination and entered a judgment order. As a result, the final net subsidy rate for all programs for Usinor Sacilor has decreased from 23.11% to 12.51% *ad valorem*, and the "country-wide" rate has decreased from 23.11% to 12.51% *ad valorem*.

Consistent with the decision of the Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department of Commerce will direct the Customs Service to change the cash deposit rates being used in connection with the suspension of liquidation of the subject merchandise once there is a "conclusive" decision in this case.

**EFFECTIVE DATE:** January 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Cindee Thirumulai, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230, telephone: (202) 482-4087.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On January 27, 1993, the Department of Commerce (the "Department" or "Commerce") published notice of its final affirmative countervailing duty determination of certain hot-rolled lead and bismuth carbon steel products from France. *Final Affirmative Countervailing Duty Determination; Certain Hot-rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (Jan. 27, 1993). In that determination, the Department set forth its finding of a final net subsidy rate of 23.14% *ad valorem* for Usinor Sacilor and 23.14%

*ad valorem* for the "country-wide" rate. On March 22, 1993, the Department published a countervailing duty order correcting ministerial errors and instructing the Customs Service to collect cash deposits at the rate of 23.11% *ad valorem* for Usinor Sacilor and 23.11% *ad valorem* for the "country-wide" rate, on entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date. 58 FR 15326.

Following publication of the Department's countervailing duty order, petitioners and respondents filed lawsuits with the Court of International Trade ("CIT") challenging the Department's final determination.

In its first decision in this case, *Usinor Sacilor v. United States*, 893 F. Supp. 1112 (CIT 1995), the CIT rejected the Department's reliance on IRS tables showing industry-specific average useful life of assets in determining an allocation period of 15 years. In a subsequent remand determination, the Department calculated a company-specific allocation period for Usinor Sacilor based on the average useful life of non-renewable physical assets, and the CIT affirmed it. *Usinor Sacilor v. United States*, 955 F. Supp. 1481 (1997).

In a later decision, *Usinor Sacilor v. United States*, 966 F. Supp. 1242 (1997), the CIT remanded the case to the Department on the issue of the appropriate sales denominator and instructed the Department to adjust its countervailing duty rates to reflect the fact that the subsidies at issue benefitted Usinor Sacilor's worldwide production rather than just Usinor Sacilor's domestic production. In its ensuing remand determination, dated July 28, 1997, the Department followed the CIT's instructions and adjusted the countervailing duty rates. On December 18, 1997, in *Usinor Sacilor v. United States*, Consol. Court No. 93-04-00230, Slip Op. 97-177, the CIT affirmed the Department's remand determination and entered a judgment order.

As a result of the remands in this case, the net subsidy rate for all programs for Usinor Sacilor has decreased from 23.11% to 12.51% *ad valorem*, and the "country-wide" rate has decreased from 23.11% to 12.51% *ad valorem*.

##### **Suspension of Liquidation**

In its decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Court of Appeals for the Federal Circuit ("CAFC") held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the

Department's determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, Commerce must suspend liquidation pending the expiration of the period to appeal the CIT's December 18, 1997 ruling or, if that ruling is appealed, pending a final decision by the CAFC. However, because entries of the subject merchandise already are being suspended pursuant to the countervailing duty order in effect, the Department need not order the Customs Service to suspend liquidation. Further, consistent with *Timken*, the Department will order the Customs Service to change the relevant cash deposit rates in the event that the CIT's ruling is not appealed or the CAFC issues a final decision affirming the CIT's ruling.

Dated: January 13, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98-1571 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Docket No. 971202287-7287-01]

#### Special American Business Internship Training Program (SABIT)

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as "interns") from Russia. The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the New Independent States of the former Soviet Union (NIS) with U.S. firms which provide them with three to six months of hands-on training in a U.S. market economy.

Under the SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. ITA will interview and recommend eligible interns to participating companies. *Interns must come from Russia and be*

*citizens of the Russian Federation.* The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management or commercially-oriented scientific operations. At the end of the training program, interns must return to Russia. All interns will be selected from a pre-screened group of qualified mid-level managers; nominations from outside of this group will not be accepted.

**DATES:** The closing date for applications is March 31, 1998. An original and two copies of the application (Standard Form 424 (Rev. 4-92) and supplemental material) are to be sent to the address designated in the Application Kit and postmarked by the closing date.

Applications will be considered on a "rolling" basis as they are received, subject to the availability of funds. If available funds are depleted prior to the closing date, a notice to that effect will be published in the **Federal Register**. Processing of complete applications takes approximately two to three months. Competitive Application kits will be available from ITA starting on January 23, 1998.

**ADDRESSES:** To obtain a copy of the Application Kit please E-mail: [sabitapply@usita.gov](mailto:sabitapply@usita.gov) (please state which format, e.g. WordPerfect® 6.1), telephone (202) 482-0073, facsimile (202) 482-2443 (these are not toll free numbers), or send a written request with two self-addressed mailing labels to "Application Request" The SABIT Program, HCHB Room 3319, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

**FOR FURTHER INFORMATION CONTACT:** Liesel Duhon, Director, SABIT Program, U.S. Department of Commerce, phone—(202) 482-0073, facsimile—(202) 482-2443. These are not toll free numbers. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester.

**SUPPLEMENTARY INFORMATION:** SABIT exposes Russian business managers and scientific managers to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers and scientists which cannot

be duplicated by American managers traveling to their territories.

#### Business Executives

SABIT assists economic restructuring in Russia by providing top-level business managers with practical training in American methods of innovation and management in such areas as strategic planning, financing, production, distribution, marketing, accounting, wholesaling, and labor relations. This first-hand experience in the U.S. economy enables interns to become leaders in establishing and operating a market economy in Russia, and creates a unique opportunity for U.S. firms to familiarize key executives from Russia with their products and services.

#### Scientist Managers

SABIT provides opportunities for gifted scientists to apply their skills to peaceful research and development in the civilian sector, in areas such as defense conversion, medical research, and the environment, and exposes them to the role of scientific research in a market economy where applicability of research relates to business success. Sponsoring firms in the U.S. scientific community also benefit from exchanging information and ideas, and different approaches to new technologies.

#### Funding Availability

Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the "Act") funding for the program will be provided by the United States Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act and other applicable grant rules. The estimated amount of financial assistance available for the program is \$175,000. Additional funding is anticipated at a future date in 1998. Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. All internships are three months; however, ITA reserves the right to allow an intern to stay for a shorter period of time (no less than one month) if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. ITA will reimburse companies for the round trip international travel of each intern from the intern's home city in Russia to the U.S. internship site, upon submission to ITA of the paid travel invoice, payment receipt, or other evidence of payment

and the form SF-270, "Request for Advance or Reimbursement." Travel under the program is subject to the Fly America Act. ITA will reimburse companies for up to \$500 per month housing subsidy. Recipient firms provide \$30 per day directly to interns. ITA will reimburse recipient firms for this stipend of \$30 per day per intern for up to three months as well as the actual price of the monthly housing, up to \$500 per month, upon submission by company of an end-of-internship report and form SF-270. If the Russian Government pays for the international airline travel, recipients will not be eligible for reimbursement for airtravel. In general, each award will have a cap of \$5,000 per intern for total cost of airline travel, housing subsidy and stipend. ITA reserves the right to allow an award to exceed this amount in cases of unusually high costs, such as airfare from remote regions of Russia. However, the total payment cannot exceed the award amount. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including: visa fees, additional housing costs beyond the \$500 housing subsidy per month, insurance, any food and incidentals costs beyond \$30 per day, any training-related travel within the U.S., and provision of the hands-on training for the interns.

U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. However, prior to acceptance as a SABIT intern, work plans and candidates must be approved by the SABIT Program. Furthermore, program training will be monitored by SABIT staff and evaluated upon completion of training.

### Eligibility

Eligible applicants for the SABIT program will include any for profit or non-profit U.S. corporation, association, organization or other public or private entity. Agencies or divisions of the federal government are not eligible.

### Evaluation Criteria

Consideration for financial assistance will be given to those SABIT proposals which:

(1). Demonstrate a commitment to the intent and goals of the program to provide practical, on-the-job, non-academic, non-classroom, training: in the case of manager interns, an appropriate management training

experience, or, in the case of scientific managers, a practical, commercially-oriented scientific training experience.

(2). Respond to the priority needs of senior business managers and scientists in Russia, as determined by ITA.

(3). Host firms must be solidly committed to interns' return to Russia upon completion of the internships.

(4). Present a realistic work plan describing in detail the training program to be provided to the SABIT intern(s). Work plans must include the following:

(a). Whether Applicant is applying to host managers or scientific managers, or both (and the number of each); (b). the duration of the internship. As noted above, ITA reserves the right to allow an intern with very senior management responsibilities to stay for a shorter period (minimum of one month) if the U.S. company agrees and the intern demonstrates a compelling need for a shorter internship based on his or her management responsibilities; (c). the location(s) of the internship; (d). the name, address, and telephone number of the designated internship coordinator; (e). name(s) of division(s) in which the intern(s) will be placed; (f). the individual(s) in the U.S. company under whose supervision the intern will train; (g). the proposed internship training activities. The components of the training activities must be described in as much detail as possible, preferably on a week-by-week basis. The description of the training activities should include an accounting of what the intern's(s') duties and responsibilities will be during the training; (h). the anticipated housing arrangements to be provided for the intern(s). Note that housing arrangements should be suitable for mid- and senior-level professionals, and that each intern must be provided with a private room.

(5). Include a brief objectives section indicating why the Applicant wishes to provide an internship to a manager(s) or scientist(s) from Russia, and how the proposed internship would further the purpose of the SABIT program as described above.

(6). Provide a general description of the profile of the intern(s) the Applicant would like to host, including: educational background; occupational/professional background (including number of years and areas of experience); size and nature of organization at which the intern(s) is/are presently employed; preference for the region of Russia where the intern(s) is/are employed; and whether Applicant is open to sponsoring interns from a variety of Russian regions.

(7). Indicate whether Applicant organization operates in one or more of

the following business sectors: (a). Agribusiness (including food processing and distribution, and agricultural equipment), (b). Defense conversion, (c). Energy, (d). Environment (including environmental clean-up), (e). Financial services (including banking and accounting), (f). Housing, construction and infrastructure, (g). Medical equipment, supplies, pharmaceuticals, and health care management, (h). Product standards and quality control, (i). Telecommunications, and (j). Transportation. Applicant proposal must provide an explanation including description and extent of involvement in the sector(s). While Applicants involved in any industry sector may apply to the program, priority consideration is given to those operating in the above sectors.

Evaluation criteria 1-6 will be weighted equally. ITA does not guarantee that it will match Applicant with the profile provided to SABIT.

### Selection Procedures

Each application will receive an independent, objective review by one or more three or four-member ITA review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive, "rolling" basis as they are received in accordance with the selection evaluation set forth above. Awards will be made to those applications which successfully meet the selection criteria. If funds are not available for all those applications which successfully meet the criteria, awards will be made to the first applications received which successfully do so. ITA review panel(s) reserve(s) the right to reject any application; to limit the number of interns per applicant; to waive informalities and minor irregularities in applications received; and to consider other than competitive procedures to distribute assistance under this program and in accordance with the law. ITA review panel(s) reserve(s) the right to make awards based on diversity of U.S. geographic and organization size. Recipients may be eligible, pursuant to approval of an amendment of an active award, to host additional interns under the program. ITA reserves the right to evaluate applicants based on past performance. The Director of the SABIT Program is the final selecting official for each award.

### Additional Information

Applicants must submit: (1) Evidence of adequate financial resources of Applicant organization to cover the costs involved in providing an

internship(s). As evidence of such resources, Applicant should submit financial statements audited by an outside organization or an annual report including such statements. If these are not available, a letter should be provided from the Applicant's bank or outside accountant attesting to the financial capability of the firm to undertake the scope of work involved in training an intern under the SABIT program. (2) Evidence of a satisfactory record of performance in grants, contracts and/or cooperative agreements with the Federal Government, if applicable. (Applicants who are or have been deficient in current or recent performance in their grants, contracts, and/or cooperative agreements with the Federal Government shall be presumed to be unable to meet this requirement). (3) A statement that the Applicant will provide medical insurance coverage for interns during their internships. Recipients will be required to submit proof of the interns' medical insurance coverage to the Federal Program Officer, before the interns' arrivals. The insurance coverage must include an accident and comprehensive medical insurance program as well as coverage for accidental death, emergency medical evacuation, and repatriation.

#### Other Requirements

All applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.
2. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.
3. Recipients and subrecipients are subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.
4. Participating companies will be required to comply with all relevant U.S. tax and export regulations. Export controls may relate not only to licensing of products for export, but also to technical data transfer.
5. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."
6. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.
7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.
8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.
9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:
  - (a) Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.
  - (b) Drug Free Workplace: Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.
  - (c) Anti-Lobbying: Funds provided under the SABIT program may not be used for lobbying activities. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.
  - (d) Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.
10. Lower Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.
11. Indirect Costs: Indirect costs are not allowed under the SABIT program.
12. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.
13. The following statutes apply to this program: Chapter 11 of Part I of the Foreign Assistance Act of 1961, as amended, including section 498A (b), regarding ineligibility for assistance; provisions in annual Foreign Operations, Export Financing, and Related Programs Appropriations Act, including the following provisions contained in Public Law 103-87: Use of American Resources (Section 559 of the Foreign Operation, Export Financing, and Related Programs Appropriations Act, 1995, Pub. L. 103-87); Impact on Jobs in the United States (Section 545 of the Foreign Operation, Export Financing, and Related Programs Appropriations Act, 1995, Pub. L. 103-87); Bumpers Amendment (Section 513(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Pub. L. 103-87); Lautenberg Amendment (Section 513(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Pub. L. 103-87); and Section 660(a) of the Foreign Assistance Act of 1961, as amended.
14. Audit Requirements: The DOC Office of Inspector General has authority under the Inspector General Act of 1978, as amended, to conduct an audit of any DOC award at any time.
15. Payments. As required by the Debt Collections Improvement Act of 1996, all Federal payments to award recipients pursuant to this announcement will be made by electronic funds transfer.
16. The collection of information is approved by the Office of Management and Budget, OMB Control Number 0625-0225. Public reporting for this collection of information is estimated to

be three hours per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be provided confidentially to the extent allowed under the Freedom of Information Act. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Clearance Officer, International Trade Administration, Department of Commerce, Room 4001, 14th and Constitution Ave., N.W., Washington, D.C. 20230.

Dated: January 20, 1998.

**Liesel C. Duhon,**

*Director, SABIT Program.*

[FR Doc. 98-1618 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-HE-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010898A]

#### Notice of Workshop

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that NMFS will sponsor a workshop for the members of its Individual Fishing Quota (IFQ) Advisory Panels and of the National Research Council (NRC) Committee to Study IFQs. The workshop will be held in New Orleans, Louisiana and will be open for public observation.

**DATES:** The workshop will begin at 9:30 a.m. on January 24, 1998 and will end at 5 p.m. on January 25, 1998.

**ADDRESSES:** The workshop will be held at Le Pavillon Hotel, 833 Poydras Street, New Orleans, Louisiana; telephone: 800-535-9095.

**FOR FURTHER INFORMATION CONTACT:** Amy Gautam, NMFS, Office of Science and Technology; telephone: (301)713-2328.

**SUPPLEMENTARY INFORMATION:** In the reauthorization of the Magnuson-

Stevens Act (Act), Congress required the NRC to provide a report with recommendations on a national policy for implementing IFQs by October 1, 1998. The Act also required the formation of NMFS Advisory Panels to provide support to the NRC committee and to NMFS in their respective roles of preparing and evaluating the IFQ study. The workshop is intended to initiate a dialogue between IFQ Advisory Panel and NRC committee members related to key questions the NRC has developed. Issues discussed will include initial allocation criteria, restrictions on transferability of quota shares, enforcement and monitoring requirements, and long-term implications of implementing IFQs relative to other management regimes. Members of the public are invited to observe the proceedings, but will not be allowed to participate.

Dated: January 16, 1998.

**Lamar Trott**

*Acting Director, Office of Science and Technology, National Marine Fisheries Service.*

[FR Doc. 98-1544 Filed 1-16-98; 4:56 pm]

BILLING CODE: 3510-22-F

## COMMODITY FUTURES TRADING COMMISSION

### Applications of the Minneapolis Grain Exchange for Designation as a Contract Market in On-Peak Mid-Continent Area Power Pool (MAPP) Electricity Futures and Options and in Off-Peak MAPP Electricity Futures and Options

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract Market Rule Change.

**SUMMARY:** The Minneapolis Grain Exchange (MGE or Exchange) has applied for designation as a contract market in on-peak mid-continent area power pool (MAPP) electricity futures and option contracts and off-peak MAPP electricity futures and option contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

**DATES:** Comments must be received on or before February 23, 1998.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to the MGE mid-continent area power pool (MAPP) electricity futures and options.

#### FOR FURTHER INFORMATION CONTACT:

Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418-5282. Facsimile number: (202) 418-5527. Electronic mail: [jstorer@cftc.gov](mailto:jstorer@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the MGE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the MGE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 15, 1998.

**John R. Mielke,**

*Acting Director.*

[FR Doc. 98-1620 Filed 1-22-98; 8:45 am]

BILLING CODE 6351-01-P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Notice of Opportunity To Administer the President's Student Service Awards

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of opportunity to administer the President's Student Service Awards.

**SUMMARY:** The Corporation for National Service (the Corporation) seeks an organization or collaboration of organizations that is capable of administering the President's Student Service Awards program. Public or private nonprofit organizations are eligible to apply. The non-monetary awards will recognize students and other school-aged youth who serve in their communities across the country. This recognition program will help make citizen service a common expectation among elementary, secondary, and college students throughout America.

Students and other school-aged youth who receive the President's Student Service Award may render service to their communities through a service-learning program sponsored by a school, college, or university, through a program sponsored by a community-based organization, or through their own initiative as individual community service volunteers. For students age 12 or older, a criterion will be performing service of 100 hours or more within a one-year period.

The President's Student Service Awards program does not involve Federal financial assistance to the organization or organizations selected to administer the program. The selected organization or collaboration of organizations is expected to raise or provide any up-front costs that are required, with future operation of the program conducted on a self-sustaining basis as described in this Notice.

The selected organization or organizations will furnish the necessary personnel, materials, services and facilities to administer the program, including purchase and/or production of all award materials; distribution of award materials; promotion; self-evaluation, quarterly and annual budget and demographic reports; and other administrative duties that will be determined in a Memorandum of Agreement and subsequent annual plans. The selected organization or organizations will be expected to provide input regarding program design, implementation, and promotion, and

will also be expected to coordinate as necessary with other organizations or entities engaged in the promotion of service.

**DATES:** All proposals must be received by the Corporation at the address set out below by 3:30 p.m. (E.S.T.) February 20, 1998.

**ADDRESSES:** Proposals shall be submitted to the Corporation at the following address: Corporation for National Service, Attn: Dr. Marilyn Smith, 1201 New York Avenue NW, Washington, D.C. 20525.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the Corporation for National Service, Dr. Marilyn Smith at (202) 606-5000, ext. 209. This notice may be requested in an alternative format for the visually impaired. The Corporation's T.D.D. number is (202) 565-2799.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Corporation is a Federal government corporation that encourages Americans of all ages and backgrounds to engage in service to the community. This service is to address the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. This year, over one million students will participate in Corporation-supported Learn and Serve America service-learning programs, in which service projects are integrated into the curriculum of schools, institutions of higher education, and community youth programs.

The Corporation has authority, under the National and Community Service Act of 1990, as amended, 42 U.S.C. 12653(n), 12653b and under Executive Order 12819 (October 28, 1992), to make Presidential awards to young individuals who provide significant service to their communities. Under this authority, the Corporation implemented the President's Youth Service Awards program from 1992 through 1994. The President's Youth Service Awards, co-sponsored by the Points of Light Foundation and carried out by the American Institute for Public Service, provided non-monetary recognition awards to young people engaged in voluntary service to the community. Through this notice, the Corporation seeks an organization or collaboration of organizations to implement a successor

program to the President's Youth Service Awards.

### Purpose and Design of the President's Student Service Awards

The purpose of the President's Student Service Awards is to recognize outstanding service and service-learning performed by students and other school-aged youth across the country, from elementary school through higher education, and to assist in making service a common expectation of all young Americans.

Earlier this year, the conveners of the Presidents' Summit in Philadelphia, including President Clinton, former Presidents Bush, Carter, and Ford, and General Colin Powell, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;
2. Safe places with structured activities in which to learn and grow;
3. A healthy start and healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service."

The fifth goal has been specified to include, among other aims for the year 2000, two million additional young people engaging in at least 100 hours of service each year. In many instances, such service may be focused on providing the other four conditions for success to children and youth lacking them.

Appropriate recognition can be a critical factor in encouraging students and school-aged youth to render that measure of service. There are a number of existing programs that recognize outstanding service by young people, including: National Service Scholarships administered by the Corporation for National Service; the Yoshiyama Award for Exemplary Service to the Community administered by the Hitachi Foundation; the J.C. Penney Golden Rule Award; the Jefferson Awards administered by the American Institute for Public Service; the Prudential Spirit of Community Awards; and the Do Something Brick Awards.

The Corporation anticipates that the President's Student Service Awards will be based on principles and procedures for implementation in communities as agreed upon in a Memorandum of Agreement between the Corporation and the selected organization or organizations. Potential awarding organizations in each community may include: schools, state and local

education agencies, colleges and universities, youth-serving organizations, faith-based organizations, state commissions on national and community service; public and nonprofit organizations, profit-making businesses, labor unions, civic or service clubs, or neighborhood associations. Awarding organizations will certify that an individual has served at least 100 hours, over a year's period, in efforts designed to have a significant impact on meeting the needs of local communities. Individuals under the age of 12 who perform outstanding service may be eligible for recognition even if they do not meet the minimum requirement of 100 hours.

The types of service recognized could include: activities connected with service-learning courses or programs or service requirements in a school district, school, class, or institution of higher education; volunteer work with community or youth organizations; service through churches, synagogues, or other faith-based organizations; involvement in service-oriented school organizations; individual efforts to help others and improve a local community; and programs in which older young people tutor, mentor, coach, or otherwise serve younger people. The broad-based nature of this program, similar to the President's Physical Fitness Award program, is intended to include the largest possible number of students who make a substantial commitment to service.

Each award winner will receive a token of recognition (for example, a pin and a certificate) from the President. The award will involve no monetary benefit to the awardee. Any nominal fee set to cover the costs of production and distribution of awards will be paid by the local awarding organization or other sources, not by the award winner. Any fees will be subject to the approval of the Corporation.

The award program may also include additional recognition for some awardees, such as attendance at recognition events sponsored by the Corporation, the selected organization or organizations, other organizations including the Points of Light Foundation and, potentially, the White House. Other levels of recognition for service that goes substantially beyond the 100-hour criterion may be developed. Local communities will also be encouraged to establish their own recognition events or processes. The Corporation will provide the names of award winners to Governors, Mayors, the media, and other individuals interested in recognizing these individuals.

### Requirements of the Memorandum of Agreement

The Corporation anticipates entering into a Memorandum of Agreement with the selected organization or organizations by April 1, 1998, with an expected project period between April 1, 1998 and September 30, 1999. It is likely that the Memorandum of Agreement will include an option to renew on an annual basis for up to five years, after which the Corporation may conduct a new competition for an organization to administer the program.

The organization or organizations selected under this notice will: (1) complete a final program design and implementation plan for approval by the Corporation; (2) publicize the program to local communities, schools, colleges, universities, and other educational institutions, and to civic, non-profit, youth-serving, and other interested organizations throughout the country; (3) distribute the awards to recipients; (4) respond to inquiries from all parties related to these awards; (5) manage the program in a manner to assure it is self-financing and sustainable; (6) collaborate with other service-promoting organizations to encourage youth service throughout the country; and (6) comply with reporting and other requirements of the Memorandum of Agreement.

### Finances

The primary intent of the President's Student Service Awards is to promote and improve citizen service by our Nation's youth. It is not intended to be a profit-making activity. The selected organization or collaboration of organizations assumes full financial responsibility for the program. This includes award inventory, staffing, and facilities.

The Memorandum of Agreement will specify the fees or charges that may be set in this program, including a Corporation-approved "charge for services" representing a fixed percentage of the net difference between the program's total revenue and total expenses. The amount of the "charge for services" approved by the Corporation will be determined based upon compliance with the terms of the Memorandum of Agreement and other relevant considerations. Unless otherwise approved by the Corporation, any annual revenues in excess of costs are to be used to support the next year's President's Student Service Award program.

The selected organization will account for all costs and revenues associated with the operation of the

program according to the standards stated in the Memorandum of Agreement. The selected organization's performance under the Memorandum of Agreement will also be subject to oversight review and evaluation, including financial audit, by the Corporation's Chief Executive Officer, Inspector General, or their designees. The Corporation and its Inspector General will have access to any documents and records of the selected organization that are deemed necessary to carry out these oversight, evaluation, or audit activities.

### Selection Criteria

All eligible interested parties must submit a proposal of no more than 30 pages, double-spaced. Selection will be based on the following criteria, in descending order of importance:

1. Experience of the organization or organizations, and demonstrated capacity, to administer a national awards program of this size and magnitude, including the ability to disseminate information widely and quickly. This includes the key individuals who will carry out the projects, and the facilities and resources, including computer-based telecommunication devices, available to the organization or organizations. This also includes the organization or organizations' capability to develop and administer an annual budget and to collect and manage funds.

2. Proposed plan for administering the President's Student Service Award program, including financial aspects such as defraying the costs of start-up, award materials, promotion, distribution, and program management.

3. Background concerning the organization or organizations' nonprofit or public status, history, mission, size in terms of budget and personnel, and familiarity with national and community service.

Dated: January 16, 1998.

**Thomas L. Bryant,**

*Acting General Counsel, Corporation for National Service.*

[FR Doc. 98-1519 Filed 1-22-98; 8:45 am]

BILLING CODE 6050-28-P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Long-Range Air Power Panel Meeting

**AGENCY:** Under Secretary of Defense, Acquisition and Technology.

**ACTION:** Notice.

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**SUMMARY:** This notice sets forth the schedule and summary agenda for the meeting of the Long-Range Air Power Panel on February 2 and 3, 1998. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Long-Range Air Power Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0800-1800, February 2 and 3, 1998 in order for the Panel to discuss classified material.

**DATES:** February 2 and 3, 1998.

**ADDRESSES:** The Tank, 1801 N. Beauregard Street, Alexandria, VA

**SUPPLEMENTARY INFORMATION:** The Long-Range Air Power Panel (LRAP) was established October 8, 1997 in accordance with section 8131 of the Defense Appropriations Act, 1998. The mission of the Long-Range Air Power Panel is to provide the President and Congress a report containing its conclusions and recommendations concerning the appropriate B-2 bomber force and specifically its recommendation on whether additional funds for the B-2 should be used for continued low-rate production of the B-2 or for upgrades to improve deployability, survivability, and maintainability.

**PROPOSED SCHEDULE AND AGENDA:** The Panel will meet in closed session from 0800-1800 on February 2 and 3, 1998 in the Tank at the Institute for Defense Analyses Bldg. 1801 Beauregard Street, Alexandria VA. During the closed session on both days, DoD staff and contractor personnel will present the panel with briefings and status updates of current U.S. long-range air power capabilities, employment strategies and force structure plans for the future.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

**FOR FURTHER INFORMATION CONTACT:**

Please contact Colonel Vic Saltsman at (703) 695-3165.

Dated: January 16, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer Department of Defense.*

[FR Doc. 98-1582 Filed 1-22-98; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board Task Force on Submarine of the Future

**ACTION:** Notice of Advisory Committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Submarine of the Future will meet in closed session on February 3, 1998 at TRW, Fairfax, Virginia. In order for the Task Force to obtain time sensitive classified briefing, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the nation's need for attack submarines in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: January 16, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98-1580 Filed 1-22-98; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board Task Force on Satellite Reconnaissance

**ACTION:** Notice of Advisory Committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Open Systems will meet in closed session on February 23-24, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems

approach to weapon systems, and make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force will examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: January 16, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98-1581 Filed 1-22-98; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Privacy Act of 1974; System of Records Notice

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to Amend a Record System.

**SUMMARY:** The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The amendment will be effective on February 23, 1998, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C.

552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: January 16, 1998.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **N05520-5**

##### **SYSTEM NAME:**

Personnel Security Program Management Records System (*April 16, 1997, 62 FR 18590*).

##### **CHANGES:**

\* \* \* \* \*

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

In line four, after the word 'require' add 'or may in the future require' and in line 10, delete the words 'whose duties require a USCG security clearance'.

\* \* \* \* \*

#### **N05520-5**

##### **SYSTEM NAME:**

Personnel Security Program Management Records System.

##### **SYSTEM LOCATION:**

Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388-5389.

System computer facility: Defense Investigative Service (DIS), Personnel Investigations Center, 911 Eldridge Landing Road, Linthicum, MD 21090-2902.

Record documentation: Naval Criminal Investigative Service (NCIS), Washington Navy Yard, Building 111, Records Management Division, 901 M Street, SE, Washington, DC 20388-5380.

Decentralized segments: The security office of command to which the individual is assigned; Headquarters, Naval Security Group Command, 9800 Savage Road, Fort George G. Meade, MD 20755-6585; Office of Naval Intelligence, National Maritime Intelligence Center, ATTN: ONI-OCB3, 4251 Suitland Road, Washington, DC 20395-5720; and, Headquarters, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 901 M Street, SE, Washington, DC 20388-5380.

Additionally, duplicate portions of records may be held by the Chief of

Naval Personnel (Pers-81), Washington, DC 20370-5000, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203-1998; Naval Reserve Personnel Center, New Orleans, LA 70149-7800; Headquarters, U.S. Marine Corps (Code MIF), 2 Navy Annex, Washington, DC 20380-0001; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Department of the Navy military personnel and civilian employees and certain 'affiliated employees' whose duties require or may in the future require a DON security clearance or assignment to sensitive positions and aliens being processed for access to National Security information. Also included are DON adjudicative actions for all U.S. Coast Guard (USCG) military personnel and those USCG civilian employees having access to sensitive compartmented information only. Individuals adjudicated as a result of interservice and interagency support agreements. 'Affiliated employees' include contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Navy Joint Adjudicative and Clearance System (NJACS), the automated portion of this system, contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program.

The documentation system includes information pertaining to the investigation, inquiry, or its adjudication by clearance authority to include: (1) Chronology of the investigation, inquiry, and/or adjudication; (2) all recommendations regarding future status of subject; (3) decisions of security/loyalty review boards and Defense Office of Hearings and Appeals (DOHA); (4) final actions/determinations made regarding subject; and (5) security clearance, access

authorizations, or security determination; index tracings that contain aliases and names of subject as reflected in Defense Clearance and Investigations Index (DCII) under system notice V5-02; security termination; notification of denial, suspension, or revocation of clearance or access; classified nondisclosure agreements created from 1987 to early 1992 and managed by DON CAF; and other documentation related to the adjudication decision.

At local command security offices information includes tickler copies of requests for clearance and access; records of access, reports of disqualifying/derogatory information; records of clearance of individual personnel as well as accreditation of personnel for access to classified information requiring special access authorizations; nondisclosure agreements, associated briefings and debriefing statements; and other related records supporting the Personnel Security Program.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7311; 10 U.S.C. 5013; and E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; 12958, Classified National Security Information; 12968, Access to Classified Information; DoD Regulation 5200.2-R, Personnel Security Program Regulation; and OPNAV Instruction 5510.1H, Department of Navy Information and Personnel Security Program Regulation.

##### **PURPOSE(S):**

To provide a comprehensive system to manage information required to adjudicate and document the eligibility of DON military, civilian, and certain affiliated employees for access to classified information and assignment to sensitive positions. These records are also used to make determinations of suitability for promotion, employment, or assignments.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel officer actions as provided for in DoD Instruction 1320.4.

To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries for purposes of determining access to National Security information.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on paper records in file folders, audio or audiovisual tapes, micro-imaging; CD-ROM; optical digital data disk; computers; magnetic tapes, disks, and drums; and computer output products.

**RETRIEVABILITY:**

By name, dossier number, Social Security Number, and date and place of birth.

**SAFEGUARDS:**

Buildings employ alarms, security guards, and/or rooms are security controlled areas accessible only to authorized persons. DON CAF primary system paper and microfilm records are maintained in General Service Administration approved security containers and/or are stored in security controlled areas accessible only to authorized persons. Locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type combination padlock, or in similarly protected containers or area. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to NCIS Records Management Division for storage are monitored and stored on open shelves and filing cabinets located in secure areas accessible to only authorized personnel.

**RETENTION AND DISPOSAL:**

Investigative/adjudicative records on non-DoD persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action

reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment or affiliation. General and flag officer data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD-ROM records are destroyed as required by NAVSO P-5239-26, 'Remanence Security Guidebook' of September 1993.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard Building 111, 716 Sicard Street SE, Washington, DC 20388-5389.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 111, 716 Sicard Street SE, Washington, DC 20388-5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix

to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct'. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request 'Privacy Act Request'.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 111, 716 Sicard Street SE, Washington, DC 20388-5389 or the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct'. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request 'Privacy Act Request'.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

Attorneys or other persons acting on behalf of an individual must provide a written authorization from that

individual for their representative to act on their behalf.

#### CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

#### RECORD SOURCE CATEGORIES:

Information in this system comes from the cognizant security manager or other official sponsoring the security clearance/ determination for the subject and from information provided by other sources, e.g., personnel security investigations, personal financial records, military service records and the subject.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 98-1579 Filed 1-23-98; 8:45 am]

BILLING CODE 5000-04-F

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Privacy Act; Systems of Records

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Annual Notice of Systems of Records.

**SUMMARY:** The Board is publishing a description of the six systems of records it maintains under the Privacy Act of 1974, 5 U.S.C. 552a, as amended. Minor changes and corrections have been made in the description of each system of records.

**FOR FURTHER INFORMATION CONTACT:** General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana

Avenue, NW, Suite 700, Washington, DC 20004-2901, (202) 208-6387.

**SUPPLEMENTARY INFORMATION:** The Board currently maintains six systems of records under the Privacy Act. Each system is described below.

#### DNFSB-1

##### SYSTEM NAME:

Personnel Security Files.

##### SECURITY CLASSIFICATION:

Unclassified materials.

##### SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

- (1) Security clearance request information;
- (2) Records of security education and foreign travel;
- (3) Records of any security infractions;
- (4) Names of individuals visiting DNFSB; and
- (5) Employee identification files (including photographs) maintained for access purposes.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

DNFSB—to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—to determine eligibility for security clearances.

Other Federal and State agencies—to determine eligibility for security clearances.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Paper records, magnetic disk, and computer printouts.

##### RETRIEVABILITY:

By name and social security number.

##### SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

##### RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

##### SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Attention: Facilities and Security Management Specialist.

##### NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB-1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

##### RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

##### CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

##### RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF-86), agency files, official visitor logs, OPM Investigators, and DOE Personnel Security Branch.

##### SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

#### DNFSB-2

##### SYSTEM NAME:

Administrative and Travel Files.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records containing the following information:

- (1) Time and attendance;
- (2) Payroll actions, financial transactions, and deduction information requests;
- (3) Authorizations for overtime and night differential;
- (4) Credit cards and telephone calling cards issued to individuals and information pertaining to the use of such cards;
- (5) Destination, itinerary, mode and purpose of travel;
- (6) Date(s) of travel and all expenses;
- (7) Passport number,
- (8) Requests for advance of funds and vouchers, both TDY and local, with receipts;
- (9) Travel authorizations;
- (10) Employee relocation records;
- (11) Name, home address, home telephone number, social security number and birth date;
- (12) Employee parking permits;
- (13) Employee public transit subsidy applications and vouchers; and
- (14) Traveler profiles.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (Amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds;

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Financial Institutions—To credit accounts for deposits and/or allotments made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veterans Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name and social security number.

**SAFEGUARDS:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, Attention: Director of Finance and Administration.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORDS ACCESS PROCEDURE:**

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Record Access procedure.

**RECORD SOURCE CATEGORIES:**

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DNFSB-3****SYSTEM NAME:**

Drug Testing Program Records—DNFSB.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Primary System: Division of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Duplicate Systems: Duplicate systems may exist, in whole or in part, at contractor testing laboratories and collection/evaluation facilities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DNFSB employees and applicants for employment with the DNFSB.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain information regarding results of the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by DNFSB employees or employment applicants in challenge to positive test results; information supplied by individuals concerning alleged drug abuse by Board employees; and written statements or medical evaluations of attending physicians and/or information regarding prescription of nonprescription drugs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

(1) Executive Order 12564; September 15, 1986.

(2) Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Information in these records may be used by the DNFSB management:

- (1) To identify substance abusers within the agency;
- (2) To initiate counseling and rehabilitation program;

- (3) To take personnel actions;
- (4) To taken personnel security actions; and
- (5) For statistical purposes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper in file folders. Additionally, records used for initiating a random drug test are maintained on the Random Employee Selection Automation System. This is a stand-alone system resident on a desktop computer and is password-protected.

**RETRIEVABILITY:**

Records maintained in file folders are indexed and accessed by name and social security number. Records maintained for random drug testing are accessed by using a computer data base which contains employees' names, social security numbers, and job titles. Employees are then selected from the available pool by the computer, and a list is given to the Drug Program Coordinator of employees and alternates selected for drug testing.

**SAFEGUARDS:**

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Human Resources are stored in an approved security container under the immediate control of the Director, Division of Human Resources, or designee. Records in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

**RETENTION AND DISPOSAL:**

- (1) Test results, whether negative or positive, and other drug screening records filed in the Division of Human Resources will be retained and retrieved as indicated under the Retrievability category. When an individual terminates employment with the DNFSB, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.
- (2) Test results, whether negative or positive, on file in contractor testing laboratories, ordinarily will be maintained for a minimum of two years in the laboratories. Upon instructions

provided by the Division of Human Resources, the results will be transferred to the Division of Human Resources when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment with the DNFSB. Records received from the laboratories by the Division of Human Resources will be incorporated into other records in the system, or if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approval disposal methods.

- (3) Negative specimens will be destroyed according to laboratory/contractor procedures.

- (4) Positive specimens will be maintained through the conclusion of administrative or judicial proceedings, at which time they will be destroyed according to laboratory/contractor procedures.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, Attention: Director of Human Resources.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-3 contains information about him/her should be directed to Director of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORD ACCESS PROCEDURE:**

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Notification procedure above.

**RECORD SOURCE CATEGORIES:**

DNFSB employees and employment applicants who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; individuals providing information concerning alleged drug abuse by Board employees; DNFSB contractors for processing,

including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and DNFSB staff administering the drug testing program to ensure the achievement of a drug-free workplace.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a(k)(5), the Board has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(C), (H), (J), and (f). The exemption is invoked for information in the system of records which would disclose the identity of a person who has supplied information on drug abuse by a Board employee.

**DNFSB-4**

**SYSTEM NAME:**

Personnel Files.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 635 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and applicants for employment with the DNFSB, including DNFSB consultants.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records containing the following information:

- (1) Name, social security number, sex, date of birth, home address, home telephone number, grade level, and occupational code;
- (2) Official Personnel Folders (SF-66), Service Record Cards (SF-7), SF-171s, and resumes;
- (3) Records on suggestions, awards, and bonuses;
- (4) Training requests, authorization data, and training course evaluations;
- (5) Employee appraisals, appeals, grievances, and complaints;
- (6) Employee disciplinary actions;
- (7) Employee retirement records;
- (8) Records on employment transfer; and
- (9) Applications for employment with the DNFSB.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

GSA—Maintains official personnel records for DNFSB.

Office of Personnel Management—Transfer and retirement records and benefits, and collection of anonymous statistical reports.

Social Security Administration—Social Security records and benefits.

Federal, State, or Local government agencies—For the purpose of investigating individuals in connection with security clearances, and administrative or judicial proceedings.

Private Organizations—For the purpose of verifying employees' employment status with the DNFSB.

**POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name and social security number.

**SAFEGUARDS:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, Attention: Director of Human Resources.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-4 contains information about him/her should be directed to Director of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORD ACCESS PROCEDURE:**

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURE:**

Same as Notification procedures above.

**RECORD SOURCE CATEGORIES:**

Subject individuals, official personnel records, GSA, OPM for official personnel records, State employment agencies, educational institutions, and supervisors.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT**

None.

**DNFSB-5**

**SYSTEM NAME:**

Personnel Radiation Exposure Files.

**SECURITY CLASSIFICATION:**

Unclassified materials.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DNFSB employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personnel folders containing radiation exposure and whole body count.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

DNFSB—to monitor radiation exposure of its employees.

DOE—to monitor radiation exposure of visitors to the various DOE facilities in the United States.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, magnetic disk, and computer printouts.

**RETRIEVABILITY:**

By name and social security number.

**SAFEGUARDS:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area, in accordance with Board directives and Federal guidelines.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Attention: Facilities and Security Management Specialist.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if DNFSB-5 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

**RECORD ACCESS PROCEDURES:**

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**CONTESTING RECORD PROCEDURES:**

Same as Record Access procedure.

**RECORD SOURCE CATEGORIES:**

Subject individuals, previous employee records, and DOE.

**SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DNFSB-6**

**SYSTEM NAME:**

DNFSB Staff Resume book.

**SECURITY CLASSIFICATION:**

Unclassified materials.

**SYSTEM LOCATION:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Board's technical and legal staff.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A summary of each employee's educational background and work experience, with emphasis on areas relevant to the individual's work at the Board.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Resume Book may be distributed to representatives of the press, Congressional staffs, representatives of State and local governments, and to any member of the public or any organization having a legitimate interest in understanding the technical and legal qualifications of the Board's staff.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records and computer files.

**RETRIEVABILITY:**

By employee name.

**SAFEGUARDS:**

Copies of the Resume Book will be sequentially numbered and all copies will be stored under the control of a Board employee. A record will be kept of each disclosure of the book by name of the receiving party and purpose for which the information is provided. The Resume Book will not be available via Internet nor will it be placed in the Board's Public Reading Room.

**RETENTION AND DISPOSAL:**

The Resume Book will be periodically updated, and out-of-date copies will be destroyed by shredding or burning, as appropriate, when updated copies are printed.

**SYSTEM MANAGERS AND ADDRESS:**

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901. Attention: Privacy Act Officer.

**NOTIFICATION PROCEDURE:**

Board employees included in the Resume Book may examine it at any time. They may also examine the list of disclosures maintained by the System Manager.

**RECORD ACCESS PROCEDURE:**

Same as Notification Procedure.

**CONTESTING RECORD PROCEDURE:**

Any Board employee included in the Resume Book may request that corrections be made in his/her resume at any time.

**RECORD SOURCE CATEGORIES:**

Subject individuals.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

Dated: January 16, 1998.

**John T. Conway,**  
*Chairman.*

[FR Doc. 98-1604 Filed 1-22-98; 8:45 am]  
BILLING CODE 3670-01

**DEPARTMENT OF EDUCATION****Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 24, 1998.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 16, 1998.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

**Office of Postsecondary Education**

*Type of Review:* Revision.

*Title:* Income Contingent Repayment Plan Consent to Disclosure of Tax Information.

*Frequency:* Once every five years.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 300,000.

Burden Hours: 75,000.

*Abstract:* This form is the means by which a defaulted student loan borrower (and, if married, the borrower's spouse), choosing to repay under the Income Contingent Repayment Plan, provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

[FR Doc. 98-1596 Filed 1-22-98; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. ER98-421-000]****Cinergy Services, Inc.; Notice of Issuance of Order**

January 16, 1998.

Cinergy Services, Inc. (Cinergy Services) is the service company for Cinergy Corporation (Cinergy). Cinergy Services, on behalf of Cinergy's special purpose trading venture, CinCap IV, LLC (CinCap), filed an application for authorization to engage in the wholesale sale of electric power at market-based rates, and for certain waivers and authorizations. In particular, CinCap requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CinCap. On January 15, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 15, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CinCap should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CinCap is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CinCap, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CinCap's issuances of securities or assumptions of liabilities \* \* \* .

Notice is hereby given that the deadline for filing motions to intervene

or protests, as set forth above, is February 17, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1592 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. CP98-178-000]****K N Interstate Gas Transmission Company; Notice of Application**

January 16, 1998.

Take notice that on January 9, 1998, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228-8304, filed an application pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations for a certificate of public convenience and necessity to operate certain natural gas pipeline facilities under Section 7(c) of the Natural Gas Act that were constructed under Section 311 of the Natural Gas Policy Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, K N Interstate seeks authority to operate 34.4 miles of pipeline in Johnson and Miami Counties, Kansas and Jackson and Cass Counties, Missouri under section 7(c) of the Natural Gas Act. These facilities had been constructed and operated solely for the purpose of providing transportation services under Section 311 of the Natural Gas Policy Act. K N Interstate states that the authority it requests will allow it to provide open access transportation pursuant to its Part 284, Subpart G blanket certificate which will maximize the use of the subject facilities.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 6, 1998, file with the Federal Energy Regulatory Commission, 888 1st Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order.

However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N Interstate to appear or be represented at the hearing.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1590 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-373-000]

#### Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

January 16, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on January 21, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208-2158 or Sandra J. Delude at (202) 208-0583.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1594 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER98-830-000]

#### Millennium Power Partners, L.P.; Notice of Issuance of Order

January 16, 1998.

Millennium Power Partners, L.P. (Millennium) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Millennium requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions

of liabilities by Millennium. On January 15, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 15, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Millennium should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Millennium is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Millennium, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Millennium's issuances of securities or assumptions of liabilities. \* \* \*

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 17, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1593 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP98-179-000]

#### Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

January 16, 1998.

Take notice that on January 12, 1998, Mississippi River Transmission Corporation (MRT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98-179-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities in Jefferson County, Arkansas under MRT's blanket certificate issued in Docket No. CP82-489-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to construct and operate a 2-inch delivery tap and rural extension meter station to serve Arkla's rural distribution system. MRT states that the total estimated volumes to be delivered to these facilities are 14,600 MMBtu annually and 40MMBtu on a peak day. The total estimated cost of the facilities is \$5,503, and Arkla will reimburse MRT all of the actual construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1591 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. CP97-237-000]****Panhandle Eastern Pipe Line Company and Southwest Gas Storage Company; Notice of Technical Conference**

January 16, 1998.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Thursday, February 19, 1998, at 10:00 a.m. in Room 3M3, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208-2265.

**David P. Boergers,***Acting Secretary.*

[FR Doc. 98-1587 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket Nos. ER97-4829-000; and ER97-4830-000]****PP&L, Inc.; Notice of Filing**

January 16, 1998.

Take notice that on December 22, 1997, PP&L, Inc., tendered for filing its response to requests by the Commission for additional information in the above proceedings. PP&L, Inc., also states that it proposes to make certain changes to the tariff sheets for which PP&L sought approval in Docket No. ER97-4830-000, and that it requests that the Commission approve and accept for filing those changed tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**David P. Boergers,***Acting Secretary.*

[FR Doc. 98-1584 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. CP98-175-000]****Southern Natural Gas Company; Notice of Request Under Blanket Authorization**

January 16, 1998.

Take notice that on January 8, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP98-175-000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain farm tap measurement facilities in Mississippi, Louisiana and Alabama, under Southern's blanket certificate issued in Docket No. CP82-406-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that it constructed farm tap facilities to sell and deliver natural gas at the King's Gin Farm Tap on its Vicksburg Lines in Warren County, Mississippi under a May 27, 1952 agreement with King's Gin Company, Incorporated. Southern constructed farm tap facilities at the Miller Farm Tap on its Vicksburg Lines in Warren County, Mississippi under a June 14, 1963 agreement with the City of Vicksburg. Southern constructed farm tap facilities at the Priddy Farm Tap to serve Joe Priddy and Sons on its North Main Lines in Sharkey County, Mississippi under a May 14, 1962 agreement and assigned to Travelers Insurance Companies on August 29, 1985. Southern constructed farm tap facilities at the Black Belt-Dairymen Farm Tap on its South Main Line in Hale County, Alabama under a December 1, 1952 agreement with Black Belt Dairies, Incorporated. Southern constructed farm tap facilities at the Leon Farm Tap to serve Ruth Robinson Leon at its Toca Compressor Station in St. Bernard Parish, Louisiana under a

sales agreement dated June 20, 1952. Southern constructed farm tap facilities at the Gaddis Farm Tap on its South Meridian Line in Lauderdale County, Mississippi under a February 23, 1968 agreement with Mississippi Valley Gas Company. Southern constructed farm tap facilities at the Witman Farm Tap to serve M.J. Witman on its South Main Lines in Bibb County, Alabama under a February 6, 1951 agreement and assigned to Asa M. Marshall on November 22, 1982. Southern constructed farm tap facilities at the J.D. Behrens Farm Tap on its Montgomery-Columbus Line in Elmore County, Alabama under a March 24, 1951 agreement with John Skinner and assigned to John D. Behrens, Jr. on November 6, 1977.

Southern has not provided natural gas service at any of these locations for over five years. Accordingly, Southern requests authorization to abandon the King's Gin, Miller, Priddy, Black Belt-Dairymen, Leon, Gaddis, Witman, and J.D. Behrens Farm Taps. Abandonment of these farm tap facilities will decrease maintenance costs for Southern.

Southern states that the abandonment of facilities will not result in any termination of currently provided service. Southern states that its existing tariff does not prohibit this activity and that there is sufficient capacity to accommodate the proposed changes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**David P. Boergers,***Acting Secretary.*

[FR Doc. 98-1589 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. DR98-25-000, et al.]

**Pennsylvania Electric Company, et al.; Electric Rate and Corporate Regulation Filings**

January 15, 1998.

Take notice that the following filings have been made with the Commission:

**1. Pennsylvania Electric Company**

[Docket No. DR98-25-000]

Take notice that on December 29, 1997, Pennsylvania Electric Company filed a request for approval of changes in depreciation rates for accounting purposes pursuant to Section 302 of the Federal Power Act. These changes will be implemented by the Company on January 1, 1998.

*Comment date:* February 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

**2. Metropolitan Edison Company**

[Docket No. DR98-28-000]

Take notice that on December 29, 1997, Metropolitan Edison Company filed a request for approval of changes in depreciation rates for accounting purposes pursuant to Section 302 of the Federal Power Act. These changes will be implemented by the Company on January 1, 1998.

*Comment date:* February 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

**3. Central Power and Light Company**

[Docket No. DR98-32-000]

Take notice that on December 30, 1997, Central Power and Light Company filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Central Power and Light Company states that the proposed depreciation rates were approved for retail purposes by the Public Utility Commission of Texas as of May 1996. Central Power and Light Company requests that the Commission allow the proposed depreciation rates to become effective retroactively to May 1996.

*Comment date:* February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

**4. Public Service Company of Oklahoma**

[Docket No. DR98-33-000]

Take notice that on December 30, 1997, the Public Service Company of

Oklahoma filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. The Public Service Company of Oklahoma states that the proposed new depreciation rates were approved for retail purposes by the Oklahoma Corporation Commission on October 15, 1997. The Public Service Company of Oklahoma requests that the Commission allow the proposed depreciation rates to become effective June 1997.

*Comment date:* February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

**5. Western Resources, Inc.**

[Docket No. DR98-34-000]

Take notice that on December 30, 1997, Western Resources, Inc., an affiliate of Kansas Gas & Electric Company filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Western Resources, Inc., requests that the Commission allow the proposed depreciation rates to become effective February 1997.

*Comment date:* February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

**6. Canal Electric Company**

[Docket No. DR98-35-000]

Take notice that on December 30, 1997, the Canal Electric Company filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. The Canal Electric Company requests that the Commission allow the proposed depreciation rates to become effective January 1, 1995.

*Comment date:* February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. Connecticut Light and Power Company**

[Docket No. DR98-36-000]

Take notice that on December 30, 1997, Connecticut Light and Power Company, filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Connecticut Light and Power Company states that the proposed depreciation rates were approved for retail purposes by the Connecticut Department of Public Utility Control on July 1, 1996.

Connecticut Light and Power Company requests that the Commission allow the proposed depreciation rates to become effective July 1, 1996.

*Comment date:* February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. Oklahoma Gas and Electric Company**

[Docket No. DR98-37-000]

Take notice that on December 30, 1997, Oklahoma Gas and Electric Company, filed an application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Oklahoma Gas and Electric Company requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1997.

*Comment date:* February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Central Illinois Public Service Company**

[Docket No. EL98-1-001]

Take notice that on November 3, 1997, Central Illinois Public Service Company tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Boston Edison Company**

[Docket No. ER98-522-001]

Take notice that on December 30, 1997, Boston Edison Company tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Arizona Public Service Company**

[Docket No. ER98-1128-000]

Take notice that on December 18, 1997, Arizona Public Service Company (APS), tendered for filing an Amendment No. 1 (Amendment) to Service Schedule A (Schedule) of the Power Service Agreement between APS and Citizens Utilities Company (Citizens).

Copies of this filing have been served upon Citizens and the Arizona Corporation Commission.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Orange and Rockland Utilities, Inc.**

[Docket No. ER98-1129-000]

Take notice that on December 18, 1997, Orange and Rockland Utilities,

Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and US Gen Power Services, L.P. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96-210-000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of December 2, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 13. PacifiCorp

[Docket No. ER98-1130-000]

Take notice that on December 18, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of Service Agreements for transmission service under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to Delhi Energy Services, Inc., the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464-6122 (9600 baud, 8 bits, no parity, 1 stop bit).

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 14. Southwestern Public Service

[Docket No. ER98-1131-000 Company]

Take notice that on December 18, 1997, Southwestern Public Service Company, tendered for filing an amendment to Exhibit D of the Agreement for Wholesale Full Requirements Electric Power Service for Farmers' Electric Cooperative, Inc. (FEC), Central Valley Electric Cooperative, Inc. (CVEC), Roosevelt County Electric Cooperative, Inc. (RCEC), and Lea County Electric Cooperative, Inc., (LCEC).

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 15. Duquesne Light Company

[Docket No. ER98-1132-000]

Take notice that December 18, 1997, Duquesne Light Company (DLC), filed a

Service Agreement dated December 8, 1997, with DTE Energy Trading under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds DTE Energy Trading as a customer under the Tariff. DLC requests an effective date of December 8, 1997, for the Service Agreement.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 16. The Dayton Power and Light Company

[Docket No. ER98-1133-000]

Take notice that on December 18, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing DTE Energy Trading, Inc., ProLiance Energy L.L.C., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon DTE Energy Trading, Inc., ProLiance Energy L.L.C., and the Public Utilities Commission of Ohio.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 17. Louisville Gas and Electric Company

[Docket No. ER98-1134-000]

Take notice that on December 18, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and CMS Marketing, Services & Trading under Rate GSS.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 18. Idaho Power Company

[Docket No. ER98-1135-000]

Take notice that on December 18, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and SCANA Energy Marketing.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 19. Public Service Electric and Gas Company

[Docket No. ER98-1136-000]

Take notice that on December 18, 1997, Public Service Electric and Gas

Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Constellation Power Source, Inc. (Constellation), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 19, 1997.

Copies of the filing have been served upon Constellation and the New Jersey Board of Public Utilities.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 20. Public Service Electric and Gas Company

[Docket No. ER98-1137-000]

Take notice that on December 18, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Southern Energy Trading and Marketing, Inc. (SETM), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 19, 1997.

Copies of the filing have been served upon SETM and the New Jersey Board of Public Utilities.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 21. Deseret Generation & Transmission Co-Operative

[Docket No. ER98-1138-000]

Take notice that on December 17, 1997, Deseret Generation and Transmission Co-operative (Deseret), tendered for filing Revised Sheet Nos. 65-66, 150, 157, and 167 of its FERC Electric Tariff, Original Volume No. 2, which reflect Deseret's change of address. Deseret asks the Commission to set an effective date for the filing of December 22, 1997. Copies of the filing were served upon Deseret's FERC Electric Tariff, Original Volume No. 2 customers.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 22. Deseret Generation & Transmission Co-Operative

[Docket No. ER98-1139-000]

Take notice that on December 17, 1997, Deseret Generation &

Transmission Co-operative, tendered for filing an executed umbrella non-firm point-to-point service agreement with Williams Energy Services Company under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of December 17, 1997. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97-487-000. Williams Energy Services Company has been provided a copy of this filing.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 23. New England Power Pool

[Docket No. ER98-1140-000]

Take notice that on December 18, 1997, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of January 1, 1998, of Wheeled Electric Power Company (Wheeled Electric). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Wheeled Electric. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Wheeled Electric with an effective date of January 1, 1998, would relieve Wheeled Electric, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Wheeled Electric from membership in the Pool. Wheeled Electric owns no generation or transmission facilities in the New England Control Area.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 24. Washington Water Power

[Docket No. ER98-1141-000]

Take notice that on December 19, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Engage Energy US, L.P. (Superseding an Unexecuted Service Agreement previously assigned as Service Agreement No. 65 under FERC Docket No. ER97-1252-000 for Coastal Electric Services Company, now doing business as Engage Energy US, L.P.). WWP requests waiver of the prior notice

requirement and requests an effective date of December 1, 1997.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 25. Consolidated Edison Company of New York, Inc.

[Docket No. ER98-1203-000]

Take notice that on December 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of October 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon CH.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 26. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98-1212-000]

Take Notice that on December 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in the annual fixed rate carrying charges. Con Edison has requested that this increase take effect as of November 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 27. New York State Electric & Gas Corporation

[Docket No. ER98-1267-000]

Take notice that on December 31, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing a Clarification with the transmission services provided under Niagara Mohawk Power Corporations FERC Rate Schedule No. 165 and New York State Electric & Gas Corporation's FERC Rate Schedule No. 115.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of November 27, 1997, for the Clarification. NYSEG has served copies of the filing on The New York State

Public Service Commission and on the Customers.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 28. Public Service Company of New Mexico

[Docket No. ER98-1285-000]

Take notice that, on December 18, 1997, Public Service Company of New Mexico (PNM), submitted tariff sheets under its open access transmission service tariff (tariff), incorporating provisions for rights of first refusal for tariff and pre-tariff transmission service and bundled service customers. Copies of PNM's filing have been posted and are available for inspection in PNM's office in Albuquerque, New Mexico. This filing is also available in the Open Access Tariff Filings directory of the FERC Electric Power Data Bulletin Board.

*Comment date:* January 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1586 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2612-005]

### Central Maine Power Company; Notice of Extension of Time

January 16, 1998.

The Commission issued a Notice of Availability of a Draft Environmental Assessment (DEA) for the above-docketed project on December 17, 1997

(62 FR 67070, December 23, 1997), with a comment period ending on January 16, 1998. On January 13, 1998, Central Maine Power Company (CMP) filed a motion requesting a 30-day extension of the review period because of unexpected emergency conditions CMP is presently experiencing due to unusually harsh weather.

Upon consideration, notice is hereby given that an extension of time for CMP and all interested parties to review the DEA is granted. Comments on the DEA shall be filed on or before February 17, 1998.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1585 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP98-100-000]

#### Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed ANP Bellingham Lateral Project and Request for Comments on Environmental Issues

January 16, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 1.1 miles of 14-inch-diameter pipeline, a new meter station and appurtenant facilities, proposed in the ANP Bellingham Lateral Project.<sup>1</sup> This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

#### Summary of the Proposed Project

Algonquin Gas Transmission Company (Algonquin) proposes to expand the capacity of its facilities in Massachusetts to transport an additional 110,000 dekatherms per day of natural gas to the planned American National Power Bellingham Power Company (ANP) plant. Algonquin seeks authority to construct and operate:

- 1.1 miles of 14-inch-diameter pipeline in the town of Bellingham, Massachusetts;

- A new meter station at the planned ANP power plant in Bellingham; and
- A tap and valving in Bellingham.

ANP would construct a 580 megawatt power plant in the town of Bellingham. ANP would construct about 200 feet of nonjurisdictional pipeline to connect the meter station with the power plant and appurtenant facilities.

The location of the project facilities is shown in appendix 1.<sup>2</sup> If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

#### Land Requirements for Construction

Construction of the proposed facilities would require about 9.43 acres of land. Following construction, about 4.12 acres would be maintained as permanent pipeline right-of-way. The remaining 5.31 acres of land would be restored and allowed to revert to its former use.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Land use;
- Cultural resources;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and

- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

#### Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effect on the Charles River during crossing by directional drilling.
- Potential effect on two water supply wells close to the proposed lateral.
- Potential effect on two archeological sites.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

#### Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.2;
- Reference Docket No. CP98-100-000; and

<sup>1</sup> Algonquin Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

<sup>2</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

• Mail your comments so that they will be received in Washington, DC on or before February 17, 1998.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98-1588 Filed 1-22-98; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5952-2]

### Agency Information Collection Activities Up for Renewal; Identification, Listing and Rulemaking Petitions Information Collection Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Identification, Listing and Rulemaking Petitions ICR Number 1189.05. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 24, 1998.

**ADDRESSES:** Commenters must send an original and two copies of their comments referencing docket number F-98-ILIP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F-98-ILIP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: <http://www.epa.gov/epaoswer/osw/hazwaste.htm#id>

FTP: [ftp.epa.gov](ftp://ftp.epa.gov)

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the "Federal Register." EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in

transmission or during conversion to paper form, as discussed above.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

For more detailed information on specific aspects of this rulemaking, contact Jim Kent, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703-308-0461, Kent.Jim@EPAMail.EPA.Gov.

### SUPPLEMENTARY INFORMATION:

**Affected entities:** Entities potentially affected by this action are rulemaking petitioners under 40 CFR 260.20(b), 260.21 and 260.22; owners or operators of enclosed flame combustion devices requesting a variance under 40 CFR 260.30-33; generating facilities seeking a hazardous waste exclusion for certain types of wastes under 40 CFR 261.3 and 261.4; and generators and treatment, storage and disposal facilities requesting exemptions from listing as F037 and F038 wastes under 40 CFR 261.31(b)(2)(ii).

**Title:** Identification, Listing, and Rulemaking Petitions ICR Number 1189.05, expires June 30, 1998.

**Abstract:** Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under section 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under section 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, EPA publishes its final decision in the **Federal Register**.

40 CFR 260.30, 260.31, and 260.33 comprise the standards, criteria, and procedures for variances from

classification as a solid waste for three types of materials, materials that are collected speculatively without sufficient amounts being recycled; materials that are reclaimed and then reused within the original primary production process in which they were generated; and materials which have been reclaimed, but must be reclaimed further before the materials are completely recovered. This variance is available to owners or operators of enclosed flame combustion devices.

40 CFR 261.33 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must either submit supporting information or keep detailed records. Under section 261.3(a)(2)(iv), generators may obtain a hazardous waste exclusion for wastewater mixtures subject to Clean Water Act regulation. Under section 261.3(c)(2)(ii)(C), generators may obtain an exclusion for certain non-wastewater residues resulting from high metals recovery processing (HTMR) or K061, K062 and F006 waste. In addition, under section 261.4(b)(6), generators of chromium-containing waste may obtain a hazardous waste exclusion under certain conditions.

Also addressed under this section is the shipment of samples between generators and laboratories for the purpose of testing to determine its characteristics or composition. Sample handlers who are not subject to DOT or USPS shipping requirements must comply with the information requirements of section 261.4(d)(2).

When intended for treatability studies, hazardous waste otherwise subject to regulation under Subtitle C of RCRA is exempted from these regulations, provided that the requirements in section 261.4(e)-(f) are met, including the following information requests: initial notification, recordkeeping, reporting, and final notification. In addition, generators and collectors of treatability study samples also may request quantity limit increases and time extensions, as specified in section 261.4(e)(3).

40 CFR 261.31(b)(2)(ii) governs procedures and informational requirements for generators and treatment, storage and disposal facilities to obtain exemptions from listing as F037 and F038 wastes. Also under this section are regulations promulgated in 1990 under section 261.35(b) and (c) governing procedures and information requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or

constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and in 48 CFR Chapter 15.

EPA would like to solicit comments to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

**Burden Statement:** Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The average annual burden imposed is approximately 57 hours per respondent. The average number of responses for each respondent is 1. The

estimated number of likely respondents is 330.

Dated: January 14, 1998.

**David Bussard,**

*Director, Hazardous Waste Identification Division.*

[FR Doc. 98-1642 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5488-3]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 5, 1998 through January 9, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

#### Draft EISs

ERP No. D-FHW-B59000-RI Rating EC2, Newport Marine Facilities Project, To Develop the Marine Mode of the Intermodal Gateway Transportation Center, Selected siting in various locations within the City of Newport, Towns of Middletown and Portsmouth, Funding, COE Section 404 Permit and US Coast Guard Permit, Aquidneck Island, RI.

**Summary:** EPA requested that additional information be provided with respect to water quality, contaminated sediments and eelgrass to fully disclose the environmental impacts of the proposed project.

ERP No. D-NOA-B39035-MA Rating LO, New Bedford Harbor Environment Restoration Plan, Implementation, Acushnet River, Buzzards Bay, MA.

**Summary:** EPA endorsed the 12 alternatives selected for near term implementation toward restoration of the New Bedford Harbor. EPA also explained that it does not support activities that would increase or alter the spatial extent of PCB contamination as a result of resuspension and that the agency will continue to work to ensure that none of the restoration work will interfere with or delay the ongoing Superfund work in the harbor.

**Final EISs**

ERP No. F-AFS-L65286-OR, Summit Fire Recovery Forest Restoration Project, Implementation, Malheur National Forest, Long Creek Ranger District, Grant County, OR.

*Summary:* Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-FAA-B51025-NH, Manchester (New Hampshire) Airport Master Plan Update, Improvements to Airside and Landside Facilities, Airport Layout Plan, Permits and Approvals, Manchester, NH.

*Summary:* EPA continues to have concerns regarding wetlands, air quality, and alternative modes of transportation.

ERP No. F-FHW-C40136-NY, Stutson Street BIN-3317120 Over Genesee River (PIN 4751.05.121), from the Interchange of the Lake Ontario State Parkway and Latta Road to Lake Shore Boulevard, COE Section 10 and 404 Permit, and Coast Guard Bridge Permits, in the City of Rochester, Town of Greece and Irondequoit, Monroe County, NY.

*Summary:* EPA had no objection to the action as proposed.

ERP No. FS-FHW-B40029-VT, Burlington Southern Connector, I-189 to Battery Street, Additional Information, Funding, Burlington, Chittenden County, VA.

*Summary:* EPA continues to express concerns regarding wetland, water and air quality and superfund issues. EPA requested that these issues be clarified in the Record of Decision.

Dated: January 20, 1998.

**B. Katherine Biggs,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98-1655 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-5488-2]

**Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed January 12, 1998 Through January 16, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980006, Draft Supplement, EPA, CA, International Wastewater Treatment Plant and Outfall Facilities, Construction, Operation and

Maintenance, Construction Grants, CA and Mexico, Due: March 09, 1998, Contact: Elizabeth Borowiec (415) 744-1165.

EIS No. 980007, Draft EIS, FHW, AZ, Red Mountain Freeway (Loop 202) Construction and Operation, between AR 87 (County Club Drive) and US-60 (Superstition Freeway), Funding, NPDES Permit and COE Section 404 Permit, City of Mesa, Maricopa County, AZ, Due: March 09, 1998, Contact: Ken Davis (602) 379-3646.

EIS No. 980008, Draft Supplement, AFS, AK, Control Lake Timber Sales, Implementation, Updated Information, Prince of Wales Island, Tongass National Forest, AK, Due: March 16, 1998, Contact: Dave Arrasmith (907) 228-6304.

EIS No. 980009, Draft EIS, AFS, ID, Frank Church—River of No Return Wilderness (FC-RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID, Due: April 24, 1998, Contact: Ken Wotring (208) 756-5131.

EIS No. 980010, Draft EIS, NOA, SC, Marine Environmental Health Research Laboratory (MEHRL), Construction and Operation of Premiere, High Technology and Marine Research Center, Approval of Permits, Charleston County, SC, Due: March 09, 1998, Contact: Donna Howard (803) 762-8604.

EIS No. 980011, Draft Supplement, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Updated Resource Information, Construction, Operation and Maintenance, COE Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM, Due: March 25, 1998, Contact: Bill Bottomly (970) 240-5337.

**Amended Notices**

EIS No. 970425, Draft EIS, SFW, MO, Big Muddy National Fish and Wildlife Refuge (Big Muddy Refuge) Expansion and Land Acquisition, Missouri River Basin, Several Counties, MO, Due: February 17, 1998, Contact: Ms. Judy McClendon (800) 686-8339.

Published FR 01-07-98—Review period extended.

Dated: January 20, 1998.

**B. Katherine Biggs,**

*Associate Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98-1656 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-M

**ENVIRONMENTAL PROTECTION AGENCY**

[OPPTS-00230; FRL-5766-1]

**Notice of Availability of FY 1998 Multimedia Environmental Justice Through Pollution Prevention Grant Funds**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is soliciting grant proposals under the Environmental Justice Through Pollution Prevention (EJP2) grant program. EPA anticipates that as much as \$4 million will be available in Fiscal Year (FY) 1998. The purpose of this program is to support pollution prevention approaches that address environmental justice concerns in affected communities. The grant funds will support: (1) Local environmental, environmental justice, and community grassroots organizations, including religious and civic organizations, as well as tribal governments that promote environmental justice using pollution prevention as the preferred approach; (2) national and regional organizations working in partnership with local organizations, or tribal governments to promote environmental justice using pollution prevention approaches; (3) state and local governments; and (4) academic institutions.

**DATES:** All applications must be received by EPA's contractor, Eastern Research Group (ERG), located in Arlington, VA, by April 20, 1998. No applications will be accepted after this date.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of the EJP2 grant program guidance and application package, or to obtain more information regarding the EJP2 grant program, please contact Louise Little at (703) 841-0483. A complete electronic copy of the EJP2 grant program guidance and application package is also available on the EPA Home Page on the Internet. The Internet address is: <http://www.epa.gov/opptintr/ejp2>.

**SUPPLEMENTARY INFORMATION:****I. Scope and Purpose of the EJP2 Grant Program**

The purpose of the FY 1998 EJP2 grant program is to support the use of pollution prevention approaches to address the environmental problems of minority communities and/or low-income communities and Federally recognized tribes. This grant program is designed to fund projects that have a

direct impact on affected communities. Funds awarded must be used to support pollution prevention programs in minority and/or low-income communities. The Agency strongly encourages cooperative efforts between communities, businesses, industry, and government to address common pollution prevention goals. Projects funded under this grant may involve public education, training, demonstration projects, collaborative public-private partnerships, or innovative approaches to develop, evaluate, and demonstrate non-regulatory strategies and technologies. Grants will be awarded to national organizations for projects to assess the results of previous and ongoing EJP2 grants and related information and to develop tools for bringing pollution prevention approaches to bear on the problems of environmental justice communities.

## II. Definition of Environmental Justice and Pollution Prevention

Environmental justice is defined by EPA as the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, programs, and policies. Fair treatment means that no racial, ethnic, or socio-economic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises, and from the execution of Federal, state, local, and tribal programs and policies.

The Pollution Prevention Act of 1990 establishes a hierarchy of environmental preferences. These practices include, in order of preference:

- Pollution prevention/source reduction
- Recycling
- Treatment
- Disposal

Pollution prevention means source reduction; it includes any practice that reduces or eliminates any pollutant at the source of generation prior to recycling, treatment, or disposal. Pollution prevention also includes practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources
- Protection of natural resources by conservation

This grant program is focused on implementing practices at the top of the hierarchy—pollution prevention/source reduction—to bring about better environmental protection.

## III. Eligibility

Any affected, nonprofit community organizations with section 501(c)(3) or section 501(c)(4)<sup>1</sup> Internal Revenue Service tax status or Federally recognized tribal organizations may submit an application upon the publication of this solicitation. A nonprofit organization is defined as any corporation, trust, association, cooperative, or other organizations that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest.
- (2) Is not organized primarily for profit.
- (3) Uses its net proceeds to maintain, improve, and/or expand its operations.

State and local governments and academic institutions are also eligible. Organizations must be incorporated by April 20, 1998, to be eligible to receive funds. Private businesses, Federal agencies, and individuals are ineligible for this grant. Organizations excluded from applying directly, as well as those inexperienced in grant writing, are encouraged to develop partnerships and prepare joint proposals with eligible national, regional, or local organizations.

No applicant can receive two grants for the same project at one time. EPA will consider only one proposal for a given project. Applicants may submit more than one application; however, applications must be for separate and distinct projects.

Organizations seeking funds from the EJP2 grant program can request up to \$100,000 for local projects, and up to \$250,000 for projects that involve multiple communities located in more than one of the 10 EPA Regions, or projects that are national in scope. In accordance with 40 CFR parts 23 and 30, EPA no longer requires cost sharing or matching under this grant program.

Dated: January 15, 1998.

**William H. Sanders,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 98-1643 Filed 1-23-98; 8:45 am]

**BILLING CODE 6560-50-F**

<sup>1</sup> As a result of the Lobbying Disclosure Act of 1995, EPA (and other Federal agencies) may not award grants to nonprofit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a section 501(c)(4) organization without distinguishing between lobbying funded by Federal money and lobbying funded by other sources.

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5951-9]

### Clean Air Act Advisory Committee: Accident Prevention Subcommittee Conference Call Meeting—February 3, 1998, 2-4 p.m.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues.

**DATES:** The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on February 3, 1998 from 2 p.m. to 4 p.m. Eastern Standard Time.

**ADDRESSES:** The meeting will be held in the Washington Information Center #12 South, in EPA Headquarters, 401 M St., NW, Washington DC 20460. Members of the public are welcome to attend in person. The Accident Prevention Subcommittee will call into the meeting by teleconference. Due to the limited teleconference lines, there will not be additional lines for the public to call in.

**FOR FURTHER INFORMATION CONTACT:** Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, US EPA (5101), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov., by telephone at (202) 260-2711 or FAX at (202) 260-1686.

### SUPPLEMENTARY INFORMATION:

#### Agenda

- I. Opening Remarks—Jim Makris
- II. Discussion of options for making RMP data available through RMP\*Info™ (Security Study)
- III. Comments from the public

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the February 3 meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than 12 noon,

January 27, 1998, in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: <http://www.epa.gov/swercepp/rmp-wg.html>

If you would like to automatically receive future information on the Accident Prevention Subcommittee by email, please send an email to Karen Shanahan at: [shanahan.karen@epamail.epa.gov](mailto:shanahan.karen@epamail.epa.gov) requesting to be put on the email list for these groups. Please include your name, address and phone number.

Dated: January 20, 1998.

**Karen Shanahan,**

*Designated Federal Official.*

[FR Doc. 98-1640 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-42191B; FRL-5768-2]

### Endocrine Disruptors; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** EPA is announcing the seventh meeting the Endocrine Disruptors Screening and Testing Advisory Committee (EDSTAC), a committee established under the provisions of the Federal Advisory Committee Act (FACA) to advise EPA on a strategy for screening chemicals and pesticides for their potential to disrupt endocrine function in humans and wildlife.

**DATES:** The EDSTAC Plenary meeting will begin on Tuesday, February 3, 1998 at 9 a.m. and end at 4 p.m. The meeting

on Wednesday, February 4, 1998, will begin at 8:30 a.m. and end at 4 p.m.

**ADDRESSES:** The meeting will be held at The Madison Hotel located at 11777 15th Street, NW., Washington, D.C. The telephone number is (202) 862-1600.

**FOR FURTHER INFORMATION CONTACT:** For technical information about the EDSTAC contact Dr. Anthony Maciorowski (telephone: (202) 260-3048; e-mail: [maciorowski.tony@epamail.epa.gov](mailto:maciorowski.tony@epamail.epa.gov)) or Mr. Gary Timm (telephone (202) 260-1859; e-mail: [tim.gary@epamail.epa.gov](mailto:tim.gary@epamail.epa.gov)) at EPA. To obtain additional information please contact the contractor assisting EPA with meeting facilitation and logistics: Ms. Tutti Otteson, The Keystone Center, P.O. Box 8606, Keystone, CO 80435; telephone: (970) 468-5822; fax (970) 262-0152; e-mail [totteson@keystone.org](mailto:totteson@keystone.org).

**SUPPLEMENTARY INFORMATION:** The tentative agenda for the February 3-4, 1998 plenary meeting includes status reports from the Screening and Testing and Priority Setting workgroups. This plenary will not include a public comment session.

### List of Subjects

Environmental Protection.

Dated: January 20, 1998.

**Susan H. Wayland,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 98-1768 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-F

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00461A; FRL-5732-8]

### Self-Certification of Product Chemistry Data; Notice of Availability of PR Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is announcing the availability of PR Notice 98-1, entitled "Self-Certification of Product Chemistry Data." This PR Notice describes the Agency's policy on self-certification of certain product chemistry data of manufacturing-use products and end-use products produced by a non-integrated formulation system. Products eligible for self-certification are formulated from registered sources. This program is voluntary and is intended to streamline, simplify, and accelerate the registration of pesticides while

protecting public health and the environment.

**ADDRESSES:** The PR Notice is available from, by mail: Sami Malak, Technical Review Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The public record, including all public comments, as well as a summary of the Agency review of comments are filed in OPP's Docket Office under docket control number "OPP-00461," located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C). The OPP's Docket Office is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sami Malak; at the address given above. Office location and telephone number: Room 256, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308-9365; by FAX (703) 308-9382; by e-mail:

[malak.sami@epamail.epa.gov](mailto:malak.sami@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability:

#### Internet

Electronic copies of this document and the various support documents are available from the EPA Home Page at the **Federal Register**--Environmental Documents entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgstr/>).

#### Fax on Demand

Using a faxphone call 202-401-0527 and select item 6106 for a copy of the PR Notice.

Under the self-certification program, applicants will submit a one-page summary of the product's physical/chemical properties, a self-certification statement, and a Good Laboratory Practice Standards statement (GLP), but will no longer be required to submit the supporting data for those studies. However, registrants must retain in their possession studies conducted in substantial conformity with Agency regulations and must submit such studies if requested by EPA. The requirements pertaining to the physical/chemical properties for chemical (conventional) pesticides are outlined in the table in 40 CFR 158.190, OPPTS Test Guidelines Series 830, Product Properties (EPA publication 712-C-96-310, 8/96), Series 880, Biochemical Test Guidelines, and Series 885, Microbial Pesticides Test Guidelines. It should be noted that OPPTS Test Guidelines, Series 830 supersedes the Pesticide

Assessment Guidelines, Subdivision-D, Product Chemistry for chemical pesticides, and Series 880 and 885 superseded Pesticide Assessment Guidelines, Subdivision M.

The PR Notice was revised to reflect public comments received by the Agency on the draft PR Notice, 62 FR 5228, February 4, 1997 (FRL-5575-3). Generally, revisions included:

(a) Some modifications to the summary form and instructions.

(b) Conversion to the new OPPTS Test Guidelines, Series 830 guideline reference numbers.

(c) Clarification of the GLP requirements.

(d) Revisions to the self-certification statement.

#### List of Subjects

Environmental protection.

Dated: January 12, 1998.

**Stephen L. Johnson,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 98-1528 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-F

#### ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-400056; FRL-5762-2]

#### Phosphoric Acid; Toxic Chemical Release Reporting; Community Right-to-Know

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petition.

**SUMMARY:** EPA is denying a petition to delete phosphoric acid from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is based on EPA's conclusion that phosphoric acid does not meet the deletion criteria of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that phosphoric acid meets the listing criterion in EPCRA section 313(d)(2)(C) in that the phosphates that result from the neutralization of phosphoric acid may cause algal blooms. Algal blooms result in deoxygenation of the water and other effects that may ultimately lead to a number of serious adverse effects on ecosystems, including fish kills and changes in the composition of animal and plant life.

#### FOR FURTHER INFORMATION CONTACT:

Daniel R. Bushman, Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

###### A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

###### B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Phosphoric acid (PA) was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must

demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has issued a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432; November 30, 1994) (FRL-4922-2).

##### II. Description of Petition

On November 9, 1990, The Fertilizer Institute (TFI) petitioned the Agency to delist PA from the list of toxic chemicals subject to reporting under section 313 of EPCRA (Ref. 1). The TFI petition was very similar to a petition that Ecolab, Inc. submitted on December 14, 1989, requesting EPA to delete PA from the EPCRA section 313 list of toxic chemicals (Ref. 2). During the final days of the review on this first petition, Ecolab, Inc. withdrew the petition. Nevertheless, EPA issued a notice in the **Federal Register** of June 25, 1990 (55 FR 25876), describing its technical review and evaluation of the petition. As part of the notice, the Agency stated that it would have denied the petition and noted that its concern for PA is due to PA's contribution to eutrophication, which results from phosphate loading in the environment. In that notice, the Agency also requested public comment on the creation of an EPCRA section 313 phosphates category that would include PA. Although EPA is not proposing to add a phosphates category at this time, it intends to propose such a category in a separate rulemaking at a later date. Because it believes that the comments received in response to the earlier notice and EPA's responses to those comments provide information relevant to the listing of PA under EPCRA section 313, it addresses those comments in Unit V. of this document.

The petition submitted by TFI was reviewed to identify the issues that differed from the Ecolab petition. The assertions that TFI addressed in its subsequent petition were: (1) PA does not meet the statutory criteria of section 313 of EPCRA; (2) the vast majority of PA releases are by sources not covered by the requirements of EPCRA section 313 at that time and therefore, the environmental effects attributed to phosphate loading caused by PA are not

effects for which the manufacturers subject to section 313 reporting should be held accountable; and (3) EPA in its exposure assessment used "flawed assumptions" and "inaccurate data" in the course of the review.

These issues are addressed in Units IV., V., and VI. of this document. EPA's technical assessment remains basically unchanged since the original review of the Ecolab petition; the previous review is summarized in the following unit.

### III. EPA's Technical Review of Phosphoric Acid

#### A. Toxicity Evaluation

1. *Human health.* In the physiological pH range of 6 to 9, PA dissociates to phosphate ions which predominately exist as a combination of  $\text{H}_2\text{PO}_4^-$  and  $\text{HPO}_4^{2-}$ . Phosphate is readily absorbed from the gastrointestinal tract. Phosphate levels in the blood of higher animals are regulated by the parathyroid gland and are strongly tied to calcium ion regulation in the body. No information was found in the available literature regarding the absorption of PA from the lungs or skin (Ref. 3).

EPA's hazard assessment resulted in the following conclusions:

a. *Acute effects.* PA may cause irritation and corrosive effects as do many other acids. PA is weaker than the other strong mineral acids. The Poison Index states that "[PA] causes irritation of eyes, skin, and the respiratory tract. When ingested it can produce nausea, vomiting, abdominal pain, bloody diarrhea, acidosis, shock and irritation or burns of the oropharyngeal mucosa, esophagus and stomach." As with other corrosive or caustic materials, the extent of damage is generally determined by the acidity of the solution and duration of contact. PA, however, is not expected to exist beyond facility site boundaries at a pH that will cause these effects (Ref. 3).

b. *Chronic effects.* PA has been shown to cause nephrocalcinosis in rats when administered at relatively high concentrations in the diet (Ref. 3). PA cannot be reasonably anticipated to cause heritable genetic effects in humans (Ref. 4). No information was found in the available literature with which to evaluate the potential of PA to cause carcinogenic effects. PA cannot be reasonably anticipated to cause developmental or reproductive toxicity in humans. No information was found in the available literature with which to evaluate the potential of PA to cause neurotoxic effects (Ref. 3).

2. *Environmental toxicity.* PA, which is a source of phosphates, can reasonably be anticipated to cause

significant adverse effects on the environment. PA, as well as other phosphates have the potential to cause increased algal growth leading to eutrophication in the aquatic environment (Ref. 5). Eutrophication may result when nutrients, especially phosphates, enter into an aquatic ecosystem in the presence of sunlight and nitrogen. The phosphate ion is a plant nutrient and it can be a major limiting factor for plant growth in freshwater environments. In excess, PA can cause extreme algal blooms. Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae. In addition, phosphates in aquatic environments may encourage the growth of introduced plants to the detriment of native plants and thereby change plant distribution.

Laboratory studies indicate that eutrophication may occur at phosphate concentrations as low as 50 parts per billion (ppb) in lakes. The resulting oxygen depletion and toxic decay products (e.g., hydrogen sulfide) kill many invertebrates and fish (Ref. 5).

Although green algae are more sensitive to growth stimulation by phosphates in fresh water, blue-green algal blooms are also stimulated by phosphates and may cause greater damage. At least three species of blue-green algae are known to excrete toxins. Secretions by cyanobacteria of dialyzable metabolites have inhibited the growth of other species of algae and may result in algal monoculture. When algal blooms of these toxic species occur in a reservoir, lake, slough, or pond, the cells and toxins can become sufficiently concentrated to cause illness or death in invertebrates and vertebrates. Major losses have been reported for cattle, sheep, hogs, birds (domestic and wild) and fishes, minor losses for dogs, horses, small wild animals, amphibians, and invertebrates (Ref. 5).

In addition to eutrophication effects, PA exhibits low toxicity to freshwater organisms where typical toxicity values are greater than 100 milligrams per liter (mg/L) (Ref. 5). Due to the existing pH restrictions under the Clean Water Act (CWA), releases of PA to surface waters are not anticipated to lead to problematic pH excursions. Under the CWA, parameters such as pH may be subject to both technology-based and water quality-based limitations. The technology-based limitations are either derived from nationally applicable effluent guidelines or pretreatment standards (many of which limit pH to a range of 6.0 to 9.0) or are based on: (1)

The permit writer's "Best Professional Judgement" if there is no applicable guideline for a direct discharger, or (2) local pretreatment requirements. Water quality-based limitations generally would be established to ensure that applicable water quality standards are attained and maintained. Dischargers are typically subject to monitoring provisions under which permittees are to report discharges of controlled parameters.

#### B. Release and Exposure

EPA does not believe that consideration of release or exposure information is necessary in determining whether to keep PA on the list of EPCRA section 313 toxic chemicals. In 1994, EPA clarified its policy on the use of exposure assessments in listing decisions under EPCRA section 313(d)(2) and (3) (November 30, 1994, 59 FR 61432). As part of this clarification, EPA stated that, under the criterion of section 313(d)(2)(C), exposure considerations are not appropriate

... for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. For chemicals which induce well-established serious adverse effects, e.g., chlorofluorocarbons, which cause stratospheric ozone depletion, EPA believes that an exposure assessment is unnecessary. EPA believes that these chemicals typically do not affect solely one or two species but rather cause changes across a whole ecosystem. EPA believes that these effects are sufficiently serious because of the scope of their impact and the well-documented evidence supporting the adverse effects. (November 30, 1994, 59 FR 61432).

Eutrophication due to phosphate loading is a well-established serious adverse effect that induces a number of changes to ecosystems, including fish kills and changes in the composition of animal and plant life. Therefore, an exposure assessment is not necessary in order to determine that phosphates, including PA, meet the listing criterion of EPCRA section 313(d)(2)(C). During its review of Ecolab's earlier petition, however, EPA conducted an exposure assessment for PA. Thus, for informational purposes only, the Agency is setting forth the results of this exposure assessment below.

PA will dissociate in water to hydrogen and phosphate ions (Refs. 6 and 7). Further reactions by abiotic processes are not expected to reduce the amount of PA released to the environment (Ref. 7). PA can be expected to enter the phosphorus cycle and become available as a nutrient in both aquatic and terrestrial settings. In aquatic settings, algae are able to

bioconcentrate low levels of phosphorus. The phosphorus cycle tends to lose phosphorus to soil and bottom sediments. Phosphorus binds to soil so its movement through soil is very slow. Ultimately, phosphorus moves from land to the sea and is deposited in bottom sediments (Ref. 7).

The exposure assessment conducted for EPA's original review of PA was based upon information from the 1987 TRI data base, which listed 1,173 facilities that discharged some amount of PA (Ref. 7). From this EPA identified 150 facilities from which PA is released to the environment in significant quantities. Of these, 46 facilities reported releases to surface waters and 52 facilities reported releases to the atmosphere. The exposure assessment concentrated on releases to water to address environmental toxicity concerns. It is important to note that this assessment only analyzed PA releases, the phosphates that are released as a result of neutralization of PA at a facility are not currently reported to the TRI. Although the currently reported PA releases do indicate which facilities are releasing phosphates, they do not reflect the full magnitude of the actual phosphate loading from facility releases. Therefore, the exposure assessment did not provide a complete picture of the significance of phosphate loading as a result of releases of phosphoric acid and phosphates from facilities that report under EPCRA section 313.

Aquatic exposure to PA was calculated by determining the stream flow at each facility. Surface water concentrations, under low flow conditions, from discharges during manufacture of PA ranged from 8.76 to 72,123 ppb. Surface water concentrations from discharges during processing and use ranged, under low flow conditions, from 0.62 to 337,262 ppb.

Facilities that routinely discharge PA to surface waters must comply with the CWA requirements. Under EPCRA section 313, by neutralizing their releases, facilities are technically releasing phosphates rather than PA to water and thus can report a release of zero. Even with neutralization of the PA, for the 1995 reporting year, TRI facilities still reported over 20 million pounds of releases of PA to surface waters from the more than 2,200 Form R reports filed. As stated above, these facilities are releasing additional phosphates to surface waters from the neutralization of PA, which are not currently captured under EPCRA section 313, but are the basis for concern for facilities that release PA.

### C. Summary of Technical Review

PA is acutely toxic to human tissue with effects ranging from irritation to acidosis and burns. The extent of the damage is dependant on the acidity of the PA solution and duration of exposure. There, however, are no acute human health effects expected to result from exposure to PA at an acidity that can reasonably be anticipated to exist in the environment under normal release conditions. Therefore, PA cannot reasonably be anticipated to cause "... significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases."

In terms of chronic health effects, the available data indicate that PA cannot reasonably be anticipated to cause cancer, heritable genetic effects, neurotoxicity, developmental or reproductive toxicity, or other chronic health effects with the exception of nephrocalcinosis when PA is administered at relatively high concentrations in the diet.

PA can reasonably be anticipated to cause significant adverse effects on the environment. PA has been demonstrated to cause environmental toxicity by its contribution to phosphate loading in the environment, which can lead to eutrophication. Eutrophication takes place in oceans, rivers, lakes, and estuaries and results when nutrients, such as phosphates, enter into an aquatic ecosystem, well supplied with sunlight and nitrogen, and stimulate excessive algal growth. EPA believes that eutrophication due to phosphate loading is a well-established serious adverse effect that induces a number of changes to ecosystems including fish kills and changes in the composition of animal and plant life.

### IV. Technical Issues Addressed by The Fertilizer Institute

TFI's petition to delist PA focused, among other things, on environmental exposure to PA from EPCRA section 313 covered facilities. Specifically, TFI argued that industrial releases of PA have no significant link to eutrophication of the nation's surface waters. EPA believes that the adverse effects associated with phosphates, including phosphoric acid, are well-established effects that cause changes across a whole ecosystem. Further, as stated in Unit III.B. of this document, EPA believes that the effects induced by phosphates are of such sufficient seriousness that factoring exposure considerations into the listing decision

is not warranted because of the scope of their impact and the well-documented evidence supporting the adverse effects. Although information on exposure is not being used in today's action to support the determination that phosphoric acid and phosphates meet the section 313(d)(2)(C) criteria, TFI's comments do pertain to information presented by EPA in the June 25, 1990 (55 FR 25876) **Federal Register** notice and, thus, will be addressed.

TFI claims that the exposure assessment portion of the technical review of Ecolab's petition was flawed. TFI's main claims are: (1) EPA's exposure modeling of releases of PA to surface waters did not sufficiently account for the fate of much of the phosphate which TFI claims would be consumed by plant and/or animal life or would be bound and thus not contribute to the concentration; (2) the modeling incorrectly calculated phosphate concentration rather than phosphorus concentration; and (3) improper receiving streams were used in the models. EPA believes that there is not expected to be any significant abiotic removal of PA after discharge into streams. PA will dissociate to hydrogen and phosphate ions when released to water. In this state there are four possible removal mechanisms: volatilization, photolysis, hydrolysis, and adsorption to sludge and sediments. Phosphate is non-volatile, therefore there will be no removal via this mechanism. Phosphate ions also will not undergo hydrolysis or photolysis. Inorganic phosphate will not adsorb to stream sediments. The only way for a phosphate ion to be able to sorb is for it first to be transformed by other processes. These transformations, however, do not limit the availability of phosphate ions to algae for several reasons. Inorganic phosphate ion is most rapidly taken up by algae, but organic and complexed phosphate can also be readily utilized by most species, particularly those with alkaline phosphatase activity. The transformed phosphate complex that is sorbed to sediments can be released back to the epilimnion by biota in the sediments, and by anaerobic conditions in the water. Lastly, algae are able to effectively utilize phosphorus from the sediments. In conclusion, phosphate ions are capable of several chemical reactions in the environment, but very few of these reactions limit its biological availability (Refs. 3, 6, and 7).

While TFI is correct that phosphate ions will be removed from surface water by organisms, this is precisely the basis for the concern over surface water releases. Uptake of and utilization of

phosphate by algae is the primary concern, since it can lead to eutrophication. While removal of phosphate ions by heterotrophic organisms could theoretically be significant, in reality it accounts for only a minor amount of removal because there is a far larger biomass of algae, and bacteria are poor competitors under carbon limiting conditions.

TFI claims that the background levels of phosphorus are above the level of concern at each of the receiving streams examined by EPA. TFI did not provide data to support this blanket statement nor did TFI describe the type of phosphorous measurement it was examining.

EPA agrees that the exposure evaluation report details the phosphate concentrations in analyzed receiving streams, whereas the concern concentration is expressed in terms of total phosphorous. Phosphate amounts are 3.07 times the phosphorous atom in the ion. Therefore, the concern concentration could be expressed as 153.5 ppb of phosphate (converted from concentration of concern of 50 ppb total phosphorous). Comparing this value to the exposure concentrations shows that 27 of the 46 surface water dischargers analyzed exceeded the concern concentration, rather than the 30 referred to in the exposure assessment. This does not alter the significance of the releases.

TFI claims that EPA used incorrect flow data for one facility in its exposure modeling. A reexamination of the river flow data, which is contained in EPA's Industrial Facilities Discharge file, showed that the original flow values used by EPA were correct. This file, which uses U.S. Geological Survey data, is maintained by EPA's Office of Water.

For a second facility, TFI claims that EPA identified and used an incorrect receiving stream. A reexamination of the information available to EPA at the time of the initial assessment confirmed the original estimated discharge site. Further inquiry substantiated the claim that surface water discharges go to the receiving waters identified by TFI. Nevertheless, the discrepancy in the flow data of the streams is of a magnitude that would not substantially affect the estimated concentrations of phosphate. Thus, the reexamination of the exposure data based on the comments by TFI has had little effect on the final concentration numbers generated in the review conducted in response to the Ecolab petition.

## V. Public Comment

In the notice issuing the results of EPA's technical review and evaluation

of the Ecolab petition to delete PA (June 25, 1990, 55 FR 25876), the Agency requested public comment on the creation of a phosphates category. In 1990, EPA received 12 comments on the creation of this category, 2 of which were in favor of the creation and 10 of which were opposed to it. Although EPA is not proposing to add a phosphates category at this time, because PA is a source of phosphates, EPA believes that the comments received and EPA's responses to those comments provide information relevant to the listing of PA under EPCRA section 313. Therefore, EPA is including the comments and responses to the issue of the addition of a phosphates category in this document. EPA intends to propose the creation of a phosphates category at a later date.

The majority of the commenters contended that eutrophication is an indirect toxic effect and that a phosphates category should not be listed under section 313 because phosphates do not exhibit direct toxicity. They asserted that Congress intended that the section 313 list of toxic chemicals include only chemicals that induce direct toxicity, and that Congress did not intend the list to include chemicals which are only indirectly toxic.

EPA disagrees with these commenters. The EPCRA section 313(d)(2) listing criteria each state that EPA may list a chemical that it determines "is known to cause or can reasonably be anticipated to cause" the relevant adverse human health or environmental effect. It further provides that "[a] determination under this paragraph shall be based on generally accepted scientific principles." Ultimately, the crux of the issue commenters raise lies in interpreting the phrase "cause or can reasonably be anticipated to cause," which Congress chose not to define. In arguing that EPA lacks the statutory authority to base its listing decisions on "indirect toxicity," the commenters would have the Agency adopt an artificially narrow view of causation that would require a single-step path between exposure to the toxic chemical and the effect. Such a mechanistic approach confuses the mode or mechanism of the chemical's action (i.e., the chain of causation) with the fundamental question of whether, regardless of the number of intervening steps, there is a natural and continuous line, unbroken by any intervening causes, between exposure to the chemical and the toxic effect. By contrast, EPA believes that Congress granted the Agency broad discretion in making listing decisions and directed

EPA to rely on generally accepted scientific principles in making determinations to implement this section of EPCRA.

It is a generally accepted scientific principle that causality need not be linear, i.e., a one-step process. e.g., Proposed Guidelines for Ecological Risk Assessment, 61 FR 47552, September 9, 1996; Proposed Guidelines for Carcinogen Risk Assessment, 61 FR 17960, April 23, 1996. For purposes of EPCRA section 313, the distinction between direct and indirect effects is technically an artificial one. Whether the toxic effect is caused directly by a chemical through a one-step process, or indirectly by a degradation product of the chemical, a second chemical that is created through chemical reactions involving the first chemical, or some other mechanism, the toxic effect still occurs as a result of exposure to the chemical. It makes no difference to the affected organism whether the toxic agent was a result of chemical degradation or chemical reactions. Fundamentally, EPCRA section 313 is concerned with adverse effects on humans and the environment, not the chain of causation by which such effects occur. In fact, this type of "indirect" toxicity is not unlike the effects of certain nonlinear carcinogens. Some carcinogens induce cancer through a two step mechanism in which the chemical causes an intervening pathological change, and this pathological change is the direct cause of the cancer, but this does not mean that the chemical is not known or reasonably anticipated to cause cancer. It is therefore reasonable for EPA to consider such effects in light of the broad statutory purpose to inform the public about releases to the environment. Were EPA to exclude indirect effects from consideration, it would dilute the purpose of the statute by precluding public access to information about chemicals that cause a wide range of adverse health and environmental effects.

In prior petition decisions, EPA has considered other types of significant adverse effects on the environment that result from the releases of chemicals. For example, the addition of seven chlorofluorocarbons (CFCs) and halons (August 3, 1990, 55 FR 31594) and the denial of petitions on volatile organic compounds (VOCs), specifically, the ethylene and propylene petition (January 27, 1989, 54 FR 4072) and the cyclohexane petition (March 15, 1989, 54 FR 10668) all concerned adverse effects on the environment.

Some commenters do not believe that it is probable that eutrophication will

occur and believe that if it does occur it is not necessarily tied to phosphate releases.

Although a number of nutrients in addition to phosphorus (as phosphates) are required for eutrophication to occur, in many cases phosphorus levels are the limiting factor. Phosphorus (as phosphate) is the most critical nutrient in controlling the growth of blue-green algal species. There is no indication in the literature that the connection between phosphates and algal blooms and fish kills is tenuous.

A number of communities have experienced problems with eutrophication that is a result of phosphate loading. For example, in the Chowan River in North Carolina significant algal blooms have occurred in 1987, 1989, and 1990 (Ref. 8).

Many commenters believe that a phosphates category should not be added because releases of phosphates from industrial facilities subject to section 313 reporting requirements are an insignificant part of total phosphates released to the environment.

Nationwide, approximately two to three percent of all releases of phosphates to the environment are from industrial facilities that are required to report under EPCRA section 313. However, discharges from industrial facilities can contribute significantly to the levels of phosphates in a receiving stream. There are cases in which the major contributor of phosphates to a stream or river is an industrial facility that is covered by EPCRA section 313. Whether EPCRA section 313 covered facilities are a significant source of a toxic chemical in the environment compared to other sources does not change the fact that a toxic chemical that meets the listing criteria of EPCRA section 313 is being released to the environment and adding to the overall amount of the chemical in the environment.

Many commenters believe that a phosphates category should not be added to the section 313 list because information on phosphate releases are captured by the National Pollutant Discharge Elimination System (NPDES).

Not all industries required to report under EPCRA section 313 are required to have NPDES permits. Moreover, even if an individual discharger is regulated and has monitoring data related to its releases of PA, this information is not readily available to the public, as it would be if the discharger were required to comply with EPCRA section 313. Rather, the public would have to resort to the more cumbersome Freedom of Information Act process to obtain the information. Thus, contrary to

commenters suggestions, listing phosphates on TRI would provide useful, easily accessible information to the public.

## VI. Explanation of Denial of Petition

EPA believes that the types of deleterious changes that PA effects in aquatic ecosystems meet the listing criteria under EPCRA section 313(d)(2). As stated in the Conference Report accompanying EPCRA, 99-962, October 3, 1986, Joint Explanatory Statement of the Committee of Conference (p. 295):

In determining what constitutes a significant adverse effect on the environment...the Administrator should consider the extent to which the toxic chemical causes or can reasonably be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site:

(1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area.

(2) Abnormal number of deaths of organisms (e.g., fish kills).

(3) Reduction of the reproductive success or the vigor of a species.

(4) Reduction in agricultural productivity, whether crops or livestock.

(5) Alterations in the behavior or distribution of a species.

(6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of ground water, and surface water and soil resources that have limited self-cleansing capability.

The effect of phosphates, including PA, on the environment is to induce a number of changes to the environment specified above, particularly fish kills and changes in the composition of animal and plant life in an area.

EPA has serious concerns for the contribution of PA to phosphate loading in the environment and its potential eutrophic effects. EPA believes that the adverse effects associated with phosphates, including phosphoric acid, are well-established effects that cause changes across a whole ecosystem. Further, EPA believes that the effects induced by phosphates, including PA, are of such sufficient seriousness that additional exposure considerations are not warranted because of the scope of the impact of the effects and the well-documented evidence supporting the adverse effects. This determination is consistent with EPA's stated policy on the use of exposure assessments in EPCRA section 313 listing and delisting decisions (59 FR 61432, November 30, 1994). Therefore, EPA is denying TFI's petition to delete PA from the EPCRA section 313 list of toxic chemicals because EPA has determined that PA meets the listing criteria of EPCRA section 313(d)(2)(C).

The Agency believes that the most efficient manner to address its concerns for phosphates is by the formation of a phosphates category. However, at this time, EPA is not proposing to create a phosphates category under EPCRA section 313. EPA intends to propose the creation of such a category as a separate rulemaking at a later date.

## VII. References

1. TFI. Petition to Delete Phosphoric Acid from the List of Toxic Chemicals Subject to the Requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1996 (SARA). The Fertilizer Institute. (November 9, 1990).

2. ECOLAB. Letter from John R. Keenan to EPA Administrator William K. Reilly. Subject: Phosphoric Acid (CAS 7664-38-2) Petition for Deletion from SARA 313. Ecolab Inc. (December 8, 1989).

3. USEPA, OPPT. Memorandum from Janette Houk, Ph.D., Hazard Integrator, Chemical Review and Evaluation Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid. (February 14, 1990).

4. USEPA, OPPT. Memorandum from Michael C. Cimino, Ph.D., Biologist, Toxic Effects Section, Toxic Effects Branch, Health and Environmental Review Division. Re: Mutagenicity Review of Delist Petition for Phosphoric Acid. (February 9, 1990).

5. USEPA, OPPT. Memorandum from Ossi Meyn, D.Env., Environmental Effects Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid - Ecological Hazard. (February 27, 1990).

6. USEPA, OPPT. DeVito, Stephen C., "Phosphoric Acid Chemistry Report." (January 11, 1990).

7. USEPA, OPPT. LaVeck, Gerald, "Exposure Assessment for a Petition to Delist Phosphoric Acid." (1990).

8. NCDNRCD. "Chowan River Water Quality Management Plan 1990 Update." North Carolina Department of Natural Resources and Community Development. (September 28, 1990).

## VIII. Administrative Record

The record supporting this decision is contained in docket control number OPPTS-400056. Comments on EPA's previous phosphoric acid petition response are contained in docket number OPPTS-400048. All documents, including the references listed in Unit VII. of this document and an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal

holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

#### List of Subjects

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: January 12, 1998.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 98-1644 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-F

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-5952-1]

#### Proposed Cost Recovery Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Hadley Street Drum Site, St. Louis, Missouri

**AGENCY:** Environmental Protection Agency (EAP).

**ACTION:** Notice of proposed cost recovery settlement under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9662(h)(1), Hadley Street Drum Site, St. Louis, Missouri.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is proposing to enter into a cost recovery administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h)(1). This settlement is intended to resolve the liability of Hadley Street Real Estate Company, Inc. ("Hadley Street Real Estate") for the response costs incurred by the EPA in overseeing a removal action conducted by Hadley Street Real Estate at the Hadley Street Drum Superfund Site, St. Louis, Missouri. The proposed settlement was signed by the Environmental Protection Agency (EPA) on October 8, 1997. Because EPA's total response costs did not exceed \$500,000, the Attorney General's concurrence is not required for this settlement.

**DATES:** Written comments must be provided on or before February 23, 1998.

**ADDRESSES:** Comments should be addressed to Daniel J. Shiel, Office of Regional Counsel, United States Environmental Protection Agency,

Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Hadley Street, Real Estate Company, Inc.*, EPA Docket NO. VII-98-F-0001.

The proposed administrative settlement may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy by mail please refer to the matter name and docket number set forth above and enclose a check in the amount of \$3.75 (25 cents per page for reproduction costs), payable to the United States Environmental Protection Agency.

**SUPPLEMENTARY INFORMATION:** The proposed administrative settlement concerns the Hadley Street Drum Superfund Site in St. Louis, Missouri. On July 24, 1992, EPA issued a CERCLA 106(a) Unilateral Administrative Order ("the Order") to Respondent requiring it to conduct removal actions at the Site. This administrative action was captioned *In the matter of Hadley Street Drum Site*, EPA Docket NO. VII-92-F-0024. The Hadley Street Drum Site included properties located at 1515 and 1531-1541 Hadley Street, St. Louis, Missouri. Hadley Street Real Estate owned a portion of the Site at the time EPA issued the UAO. Hadley Street Real Estate conducted the removal actions ordered by EPA on its property and EPA conducted the necessary removal actions on the other portion of the Site.

Hadley Street Real Estate did not agree to reimburse EPA's costs of overseeing the removal action. By letter dated October 12, 1995, EPA mailed Respondent an Itemized Cost Summary with a demand that Respondent pay EPA \$31,806.21 in response costs. This led to submittal of information on behalf of Hadley Street Real Estate supporting its claim of inability to pay the full amount of EPA's costs. Hadley Street Real Estate ultimately offered to pay \$5,000 of EPA's costs. EPA Region VII reviewed the information submitted by Hadley Street Real Estate and concluded that it could not pay more than the \$5,000 offered in settlement.

Dated: December 15, 1997.

**Dennis Grams,**

*Regional Administrator.*

[FR Doc. 98-1641 Filed 1-22-98; 8:45 am]

BILLING CODE 6560-50-M

#### FARM CREDIT ADMINISTRATION

#### Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 12, 1998 regular meeting of the Farm Credit Administration Board (Board) will not be held.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Dated: January 22, 1998.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 98-1773 Filed 1-21-98; 2:17 pm]

BILLING CODE 6705-01-P

#### FARM CREDIT ADMINISTRATION

#### Sunshine Act Meeting; Farm Credit Administration Board; Special Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 27, 1998, from 9:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

#### Open Session

- A. Approval of Minutes
- B. New Business Regulation General Financing Agreements [12 CFR Part 614] (Final)

#### \* Closed Session

- C. Report OGC Litigation Report
- \* Session closed-exempt pursuant to 5 U.S.C. 552b(c)(10).

Dated: January 22, 1998.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 98-1774 Filed 1-21-98; 2:17 pm]

BILLING CODE 6705-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[DA 98-37]

### Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction

Released: January 9, 1998.

Over the past weeks, the Wireless Telecommunications Bureau ("Bureau") has received numerous inquiries concerning the auction rules and eligibility requirements for the Local Multipoint Distribution Service ("LMDS") auction scheduled to commence on February 18, 1998. In this Public Notice, the staff provides guidance on a range of issues involving the rules for the LMDS auction.

The service and auction rules pertaining to LMDS are found in parts 1 and 101 of the Commission's rules (Title 47 of the Code of Federal Regulations). The Commission's rules governing eligibility for bidding credits were established to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and/or women (collectively referred to as "designated entities" or "DEs") are provided meaningful opportunities to compete in the provision of LMDS. These rules are primarily addressed in the *LMDS Second Report and Order*, the *LMDS Order on Reconsideration*, and the *LMDS Second Order on Reconsideration*. Additional auction information is provided to potential bidders in a comprehensive Bidder Information Package. This package contains guidelines regarding pre-auction procedures, the auction event, and post-auction procedures. (Interested parties can order an LMDS Bidder Information Package by calling (888) 225-5322, Option #2. Applicants are entitled to one free LMDS Bidder Information Package; additional copies cost \$16 each.) The Bureau will release a public notice setting forth minimum opening bids for the LMDS auction prior to the FCC Form 175 short form filing deadline.

Many of the inquiries the Bureau has received are based on the inquiring parties' specific circumstances. The Bureau has recast the most frequently asked questions in more general terms

in order to provide guidance to a larger group of interested parties. Potential applicants should understand that the advice and rule interpretations provided in this Public Notice constitute informal staff opinion, not official Commission decisions or rulings.

#### I. General Ownership Issues

**Q:** When disclosing ownership information on the FCC Form 175, should applicants report all entities that hold a five percent or greater voting (control) interest or other economic interest?

**A:** In previous services (e.g., broadband PCS), the Commission specifically required that applicants report all entities that held interests in the applicant of five percent or more that also held or were applying for CMRS or PMRS licenses. For LMDS, applicants must comply with the general reporting rule set forth in Part 1 of the Commission's rules, which is less specific about which entities must be identified. By identifying on Attachment A to their FCC Forms 175 all entities holding five percent or greater interests in the applicant that also hold or are applying for CMRS or PMRS licenses, applicants will assist themselves in identifying entities with which they must avoid contact pursuant to the anti-collusion rule. Applicants should be aware that at the long-form application stage, they will be subject to the reporting requirements contained in the newly adopted Part 1 ownership disclosure rule.

**Q:** Can new non-controlling investors be added after the FCC Form 175 is filed and throughout the auction?

**A:** New non-controlling investors can be added after the FCC Form 175 is filed and throughout the duration of the auction, provided their addition does not result in a change of control of the applicant. An applicant should amend its FCC Form 175 within 10 business days of any change, and should provide notice of the change by letter addressed to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Suite 5202, Washington, D.C. 20554, with a copy filed with the Office of the Secretary, 1919 M Street, N.W., Washington, D.C. 20554.

**Q:** When an applicant is a consortium, can only one member of the consortium conduct bidding during the auction? What if a member of a consortium decides to withdraw during the auction?

**A:** A consortium is defined as "a conglomerate organization formed as a joint venture between or among mutually independent business firms,

each of which individually satisfies the definition of a very small business, small business or entrepreneur." Where an applicant is a consortium, the gross revenues of its members are not aggregated. The definition of consortium does not prohibit one member from placing the bids for the consortium as a whole.

Because each member of a consortium must individually satisfy the definition of a very small business, small business, or entrepreneur at the FCC Form 175 filing deadline, members may withdraw during the course of the auction, or afterward, without endangering the treatment of the consortium. The withdrawal of a member would merely change the composition of the consortium, and should be reflected in a filing with the Commission. On the other hand, adding a new member to a consortium after the FCC Form 175 filing deadline will not be permitted because the filing deadline is the cut-off date for determinations of whether applicants meet the definitions of very small business, small business, or entrepreneur.

#### II. Foreign Ownership Issues

**Q:** How much foreign ownership of a licensee is permissible? Can LMDS applicants seek more than 25 percent indirect foreign ownership?

**A:** Section 310(a) of the Communications Act of 1934, as amended ("Communications Act"), prohibits granting any wireless license to a foreign government or a representative thereof. Section 310(b) of the Communications Act imposes restrictions on the foreign ownership of common carrier, broadcast, and aeronautical licensees. Under this section, the Commission may not grant a common carrier wireless license to an alien, the representative of an alien, any corporation organized under the laws of any foreign government, or any corporation of which more than 20 percent is owned by foreign entities. Section 310(b)(4) imposes additional restrictions on the foreign ownership of the parent corporation of a common carrier licensee, specifically that no common carrier license shall be granted to or held by "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens \* \* \* or by any corporation organized under the laws of a foreign country . . . if the Commission finds that the public interest will be served by the refusal or revocation of such license." Under the *Foreign Participation Order*, the Commission recently liberalized its

rules for determining when refusal or revocation would serve the public interest. The final rules set forth in the *Foreign Participation Order* will not become effective before February 9, 1998. Any applicant that is controlled by a corporation with more than 25 percent foreign ownership, or which seeks to exceed that limit, must inform the Commission in a separate petition for declaratory ruling. The Commission will accept petitions for declaratory ruling immediately, but will not necessarily rule on them prior to the auction start date. Because applicants must certify on their short form applications that they are in compliance with the foreign ownership provisions of Section 310 of the Communications Act, applicants filing petitions for declaratory rulings must reference their pending petitions in their short form applications. Applicants seeking foreign investment should familiarize themselves with the *Foreign Participation Order*, particularly Section III.D. That order is available from the Commission's web site at <<http://www.fcc.gov/ib/wto.html>>.

### III. Bidding Credits and Eligibility Issues

Q: What constitutes gross revenues as described in 47 CFR 101.1112?

A: Gross revenues include all income received by an entity, whether earned or passive, before any deductions are made for the costs of doing business, as evidenced by audited financial statements for the preceding three years. If an entity was not in existence for the entire preceding three years, gross revenues shall be evidenced by audited financial statements of the entity's predecessor-in-interest, or if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. The Commission will evaluate applicants' gross revenues as they are reflected in financial statements prepared in accordance with generally accepted accounting principles.

Q: Now that the auction has been rescheduled for February 18, 1998, will the Commission require applicants to provide audited financial statements for 1997?

A: Applicants must furnish evidence of their gross revenues based upon their most recently-completed audited financial statements. Thus, if audited financial statements for calendar year 1997 have not been fully prepared by the FCC Form 175 filing deadline of January 20, 1998, audited statements for the years 1994, 1995, and 1996 will suffice.

Q: Are the gross revenues of an applicant's affiliates counted in determining that applicant's eligibility for a bidding credit?

A: Yes. An applicant must aggregate the gross revenues of all affiliates, as defined in 47 CFR 101.1112(h), in order to determine its bidding credit eligibility.

Q: When determining eligibility for bidding credits, will the gross revenues of individuals who are affiliates be included in determining the bidder's gross revenues? Is there a conceivable instance when an individual's gross revenues will affect an applicant's eligibility for a bidding credit?

A: This issue has been raised on reconsideration in another proceeding and the Bureau refrains from directly addressing it at this point. However, the Bureau notes that for LMDS, the Commission did not adopt a rule that attributes personal net worth for purposes of determining eligibility. Personal net worth has been defined as "the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor." In other services (*i.e.*, broadband PCS), the Commission eliminated a personal net worth test, concluding that "the affiliation rules make the personal net worth rules largely unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business."

Q: Is there a minimum equity requirement for controlling small business principals?

A: No. However, the Bureau cautions that the absence of equity in the hands of controlling small business principals could raise questions about whether the applicant itself qualifies as a *bona fide* small business. For instance, if a single party holds *de jure* control, as evidenced by ownership of 50.1 percent of the voting stock, this party must also hold *de facto* control in order to be considered a controlling principal. If no single party has *de jure* control of the applicant, *de facto* control factors will determine who controls the applicant. By way of comparison, in broadband PCS, controlling principals were required to hold at least 15 percent of the applicant's total equity under one particular business structure.

Q: Does the bidding credit schedule adopted in the Commission's Part 1 Proceeding apply to LMDS?

A: No. LMDS has a specific bidding credit rule that is not affected by the Part 1 rule changes.

### IV. Anti-Collusion Rule Issues

Q: What conduct constitutes a violation of the Commission's anti-collusion rule?

A: After the deadline for submission of the FCC Form 175, applicants may not discuss the substance of their bids or bidding strategies with other bidders that have applied to bid in the same geographic license areas, with the exception of those with which they have entered into agreements identified on the FCC Form 175. The term "applicant" includes the entity that submits an application for auction participation, owners of five percent or more of that entity, and all officers and directors of that entity. (*But see* part 1 at ¶ 164 (which changes the attribution level of the anti-collusion rule to 10 percent; however, this rule does not apply to the LMDS auction. The new part 1 rules, with the exception of rules pertaining to post-auction payment and long-form application obligations, will apply only to auctions commencing after the new rules' effective date)). The rule also prohibits the transfer of indirect information which affects, or could affect, bids or bidding strategy. All bidding arrangements must be disclosed on an applicant's short form application. Auction applicants who have applied for licenses in the same geographic areas, and who are also licensees or applicants for licenses in the same or competing services, must affirmatively avoid all communications with each other that affect, or have the potential to affect, their bids or bidding strategy. This does not mean that all business negotiations between bidders for the same markets are prohibited; however, the Bureau recommends that bidders for the same markets exercise caution when engaging in such discussions.

Q: Do public statements such as "we want to win 10 million pops" or "we want to win top markets" or "we have \$5 million to spend" constitute disclosures of bids or bidding strategy?

A: Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy. The Bureau therefore urges bidders for common markets to exercise caution when making public statements about their bids or bidding strategies.

Q: If an applicant files an FCC Form 175 prior to the filing deadline of January 20, 1998, may this applicant speak with other potential applicants during the time between its filing and the deadline? In other words, at what

point are two parties considered to be competing for the same market?

A: An FCC Form 175 is considered officially filed upon the filing deadline, regardless of whether it was actually filed one day or one month prior to the deadline. Changes to electronically filed applications can be made any time prior to the filing deadline on January 20, 1998, and applicants cannot view each others' electronically filed applications prior to that deadline. Thus, parties are not considered to be competing for the same market until the window for submitting applications closes at 5:30 p.m., ET, on January 20, 1998.

Q: Can an individual act as the authorized bidder and place bids for two or more applicants who are competing for one or more of the same markets? What if different individuals who are employed by the same organization place bids for applicants in competing markets?

A: A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization, a violation could similarly occur. In such instances, the Bureau strongly encourages applicants to certify on their application that precautionary steps (e.g., establishing a "Chinese wall") have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

## V. Technical Issues

Q: In bands where Mobile Satellite Service ("MSS") feeder links are permitted, is uplink transmission (subscriber end) allowed if there is no MSS licensee operating?

A: No. The interference analyses conducted indicated that subscribers' transceivers potentially are major interferers to MSS feeder link earth station satellite receivers because of the elevation angles many will be employing. The satellites to be deployed in these MSS systems will be orbiting in different planes over the United States. Therefore, there is the potential for them to become aligned with the beam of a subscriber transceiver at any location in the United States. To review those analyses, see the Report of the LMDS/FSS 28 GHz Band Negotiated Rulemaking Committee, CC Docket No. 92-297 (September 23, 1994).

Q: What are the deadlines for 31 GHz incumbents to vacate the 31 GHz middle band?

A: Incumbent 31 GHz licensees were provided 75 days after the effective date of the LMDS service rules to request modification of their licenses to relocate to the outer two 75 megahertz blocks of the 31 GHz band. Failure to do so means that such incumbent operations become secondary to LMDS operations in the middle band. This means that LMDS operators are not required to protect these incumbent operations from interference, nor are the incumbent operations permitted to cause interference to LMDS systems. Of course, these incumbents can relocate to other bands or other transmission media at any time.

## VI. Miscellaneous

Q: Will the Commission inform applicants of the minimum opening bid for each BTA license prior to the FCC Form 175 filing deadline of January 20, 1998?

A: Yes. The Bureau released a Public Notice on October 17, 1997, seeking comment on minimum opening bid proposals. Comments were due on November 5, 1997, with reply comments due on November 10, 1997. A subsequent Public Notice extended the reply comment deadline to December 1, 1997. Prior to January 20, 1998, the Bureau will release a public notice setting forth a minimum opening bid for each license.

Q: What is the Commission's calculation to convert ILEC access lines to pops for purposes of the 10 percent in-region calculation?

A: The Commission has not developed a calculation to convert access lines to pops. The ILEC should determine the geographic area that it serves and then use census data for determining the population of that area.

Q: What are the consequences if an applicant fails to complete properly the FCC Form 175?

A: An applicant is solely responsible for the true, accurate, and complete submission of its FCC Form 175, and incomplete or inaccurate FCC Forms 175 may be rejected or required to be refiled. The Commission checks FCC Forms 175 for deficiencies that would affect their initial acceptability, and will act to apprise applicants of deficiencies after initial review. Applicants are then given an opportunity to cure such deficiencies. Once a corrected application is resubmitted, however, no major amendments can occur. This would include, for example, changes to bidding credits.

Q: Does the must-carry rule apply to LMDS for license holders who wish to provide television service?

A: No. According to the Communications Act, the must-carry rule applies only to cable operators. Cable operators are defined as persons who provide cable service to subscribers, and cable service is defined as one-way transmission of video or other programming by means of a set of closed transmission paths. As a two-way wireless service, LMDS is not subject to must-carry requirements.

Q: Will the bidding software be supported by Windows 95?

A: While the auction software has been known to work with Windows 95, Microsoft has not yet affirmed supportability. Until Microsoft makes that determination, use of the auction software with Windows 95 is solely at the bidder's own risk.

Q: Will the Commission provide applicants a list of proposed and licensed MSS feeder link earth station sites?

A: Yes. The list is attached to this Public Notice as Attachment A.

Q: Is the Commission considering the authorization of any other two-way video services in the near future?

A: Yes. Bidders should be aware that the Commission's Mass Media Bureau is conducting a proceeding in which additional spectrum for the Multipoint Distribution Service ("MDS") is being discussed. Comments in that proceeding were due December 9, 1997, and reply comments are due January 8, 1998.

Bidders should also be aware that the 39 GHz band has the potential for point-to-multipoint service.

Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

[FR Doc. 98-1608 Filed 1-22-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Approved by Office of Management and Budget

January 16, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96-511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall

be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418-0214.

#### Federal Communications Commission

*OMB Control No.:* 3060-0812.

*Expiration Date:* 06/30/1998.

*Title:* Assessment and Collection of Regulatory Fees for Fiscal Year 1997—MD Docket No. 96-186.

*Form No.:* N/A.

*Estimated Annual Burden:* 635,738 responses; 317,869 total annual hours; 0.5 hours per respondent.

*Description:* This information is required to: (1) facilitate the statutory provisions that non-profit entities be exempt from payment of regulatory fees, and (2) facilitate the FCC's ability to audit regulatory fee payment compliance in the Commercial Mobile Radio Services (CMRS) industry.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98-1658 Filed 1-22-98; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL MARITIME COMMISSION

##### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Shipco International, Inc., 12270 W.

Colonial Dr. #109, Winter Garden, FL 34787, Officers: M. Wael Shrourou, President; Mona Z. Shrourou, Secretary

B.R.A.L. Miami Inc., 6120 N.W. 74 Avenue, Miami, FL 33166, Officers: Alvaro Cruz, President, Humberto Briceno, Vice President

Service Shipping, Inc., 38104 Academy Drive, Lake Villa, IL 60046, Officers: William James Marston, President, Patricia A. Taylor, Secretary  
Interline Corporation, 2205 East Carson Street, Unit B-4, Long Beach, CA

90810, Officers: Junichi Jim Shioda, President, Kenichi Shioda, Vice President

Forwarding Services International, Inc., One Water Ridge Plaza, 2201 Water, Ridge Parkway, Suite 500, Charlotte, NC 28217, Officers: James D. McClaskey, Director, Paul L. Carter, Director

Premier Freight Forwarders, Inc., 9423 Tradeport Drive, Orlando, FL 32827, Officers: David G. Smith, President, William C. O'Fallon.

Dated: January 20, 1998.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 98-1636 Filed 1-22-98; 8:45 am]

BILLING CODE 6730-01-M

#### FEDERAL RESERVE SYSTEM

##### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1998.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Dakota Bancshares, Inc.*, Mendota Heights, Minnesota; to acquire 81 percent of the voting shares of Olivia Bancorporation, Inc., Olivia, Minnesota, and thereby indirectly acquire American State Bank of Olivia, Olivia, Minnesota.

Board of Governors of the Federal Reserve System, January 20, 1998.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 98-1647 Filed 1-22-98; 8:45 am]

BILLING CODE 6210-01-F

#### FEDERAL RESERVE SYSTEM

##### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, January 28, 1998.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

##### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph R. Coyne, Assistant to the Board; 202-452-3204.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.bog.frb.fed.us> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 21, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98-1730 Filed 1-21-98; 12:22 pm]

BILLING CODE 6210-01-P

#### FEDERAL TRADE COMMISSION

##### Cigarette Testing; Extension of Deadline for Submission of Public Comments

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of deadline for submission of comments on proposed

revisions to the Federal Trade Commission methodology for determining tar, nicotine, and carbon monoxide yields of cigarettes, and on a proposed format for disclosing the resulting ratings in advertising.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") is extending until February 4, 1998 the deadline for filing comments on its proposed revisions to the testing method used to determine the tar, nicotine, and carbon monoxide ratings of cigarettes, and on two possible formats for disclosure of those test results.

**FOR FURTHER INFORMATION CONTACT:** Shira D. Modell, Division of Advertising Practices, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326-3116.

**SUPPLEMENTARY INFORMATION:** On September 9, 1997, the Commission issued a notice proposing changes to the methodology currently used to determine cigarette ratings for tar, nicotine, and carbon monoxide. See 62 FR 48,158 (Sept. 12, 1997). The proposed methodology would produce tar, nicotine, and carbon monoxide yields using both the current testing parameters and more intensive smoking conditions, thus producing a range of potential yields for each cigarette. The Commission requested comment on those proposed changes to the testing methodology, and on the feasibility of generating the upper tier of tar, nicotine, and carbon monoxide ratings through mathematical formulas, rather than actual testing on a smoking machine. The Commission also placed on the public record two different legends that could be used in advertising to disclose the ratings and sought comment on the usefulness and feasibility of these potential disclosure formats. Finally, comment was requested on alternative approaches that were considered but not proposed by the Commission. The deadline for submission of the requested comments was November 17, 1997.

On October 29, 1997, the Commission announced that, pursuant to requests submitted by, among others, the Food and Drug Administration and the four largest cigarette manufacturers, it had decided to extend the filing deadline until January 20, 1998. See 62 FR 58,972 (Oct. 31, 1997).

The Commission has now received a request for further extension of the filing deadline from Prospect Associates, which serves as the Coordinating Center for the National Cancer Institute's Project ASSIST (American Stop Smoking Intervention Study). The

Coordinating Center and the 17 states that ASSIST funds seek this extension so they can incorporate into their comment newly available data relevant to the issues raised by the Commission's proposal, including new data from smoking machine tests conducted pursuant to a methodology promulgated by Massachusetts.

In light of the significance of the issues addressed by the Commission's September 1997 proposal, the deadline for submitting comments on that proposal is hereby extended until February 4, 1998.

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 98-1650 Filed 1-22-98; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1900 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than \$10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than \$1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are \$14,730,000 for section 8(a)(1), and \$1,473,000 for section 8(a)(2)(A).

**EFFECTIVE DATE:** January 23, 1998.

#### FOR FURTHER INFORMATION CONTACT:

James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326-2879.  
(Authority: 15 U.S.C. 19(a)(5))

By direction of the Commission,  
Commissioner Azcuenaga not participating.

**Donald S. Clark,**  
Secretary.

[FR Doc. 98-1648 Filed 1-22-98; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

### Report of the Tar, Nicotine, and Carbon Monoxide of the Smoke of 1249 Varieties of Domestic Cigarettes For the Year 1995

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission publishes the Report of the Tar, Nicotine, and Carbon Monoxide of the Smoke of 1249 Varieties of Domestic Cigarettes.

**DATES:** January 23, 1998.

**ADDRESSES:** Copies of the report are available from the FTC's World Wide Web site at: <http://www.ftc.gov> and from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-3222.

**FOR FURTHER INFORMATION CONTACT:** Tonya Esposito, Legal Assistant, Federal Trade Commission, Bureau of Consumer Protection, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. Telephone (202) 326-3247.

**SUPPLEMENTARY INFORMATION:** These are the most recent test results of the tar, nicotine, and carbon monoxide yields of the smoke of domestic cigarettes reported by the FTC. This Report contains data on 1249 varieties of cigarettes manufactured and sold in the United States in 1995. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the tar, nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. This testing was conducted under the review of a representative of the FTC through periodic unannounced inspections. TITL provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to compulsory process issued by the Commission. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and the test results were provided to the FTC in response to compulsory process.

On September 9, 1997, the Commission issued a notice requesting public comment on proposed revisions to the testing method currently used to determine the tar, nicotine and carbon monoxide ratings of cigarettes. The proposed methodology would require that each cigarette variety be tested under two different sets of smoking conditions, rather than the single set used under the current system. The revised test method would produce tar,

nicotine and carbon monoxide yields using both the current testing parameters and more intensive smoking conditions, thus producing a range of potential yields for each cigarette. The Commission also requested comment on: (1) the feasibility of generating the upper tier of ratings through mathematical formulas, rather than actual testing on a smoking machine; and (2) the usefulness and feasibility of two different legends that could be used in advertising to disclose the ratings. Comments are due by February 4, 1998.

By direction of the Commission, Commissioner Thompson and Commissioner Swindle not participating.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 98-1649 Filed 1-22-98; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Office of Consumer Affairs; Statement of Organization, Functions, and Delegations of Authority

Introduction. Part A, Chapter AW, U.S. Office of Consumer Affairs (USOCA), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, as last amended at 62 FR 29349, May 30, 1997 is being amended to reflect the elimination of the USOCA. This is a Notice of the abolishment of the U.S. Office of Consumer Affairs. The change is as follows:

Part A, Chapter AW, "U.S. Office of Consumers Affairs" is deleted in its entirety.

This reorganization is effective January 9, 1998.

Dated: January 2, 1998.

**Donna E. Shalala,**  
*Secretary.*

[FR Doc. 98-1577 Filed 1-22-98; 8:45 am]

BILLING CODE 4190-04-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 97N-0385]

#### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Approval of Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 30, 1997 (62 FR 51112), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0231. The approval expires on September 30, 1998.

Dated: January 14, 1998.

**William K. Hubbard,**  
*Associate Commissioner for Policy Coordination.*

[FR Doc. 98-1540 Filed 1-22-98; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1998.

**Name:** National Advisory Council on the National Health Service Corps.

**Date and Time:** February 5-8, 1998.

**Place:** Arkansas Excelsior Hotel, 3 State House Plaza, Little Rock, Arkansas 72201, Telephone: (501) 375-5000.

The meeting is open to the public.

**Agenda:** Agenda items include updates on the NHSC program; reports from the State Primary Care Organization, State Primary Care Association, and the Area Health Education Center programs and meetings of NHSC workgroups on scholarship taxation issues pertaining to the NHSC of the 21st century.

The opening meeting will be held on Thursday, February 5 from 6:00 p.m. to

9:00 p.m. On Friday and Saturday, meetings will begin at 8:00 a.m. and conclude around 5:30 p.m. Site visits will be made on Friday.

Anyone requiring information regarding the subject Council should contact Ms. Eve Morrow, National Advisory Council on the National Health Service Corps, Health Resources and Services Administration, 8th floor, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594-4144.

Agenda Items are subject to change as priorities dictate.

Dated: January 16, 1998.

**Jane M. Harrison,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. 98-1538 Filed 1-22-98; 8:45 am]

BILLING CODE 4160-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Submission for OMB Review; Comment Request; Case-Control Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China

**SUMMARY:** Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 24, 1997, page 3705, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

#### Proposed collection

**Title:** Case-Control study of Cancer and Related Disorders Among Benzene-Exposed Workers in China. **Type of Information Collection Request:** New. **Need and Use of Information Collection:** A case-control study will examine the relationship between exposure to benzene and the risk of

lymphohematopoietic malignancies and related disorders and lung cancer in Chinese workers. Cases and controls will be selected from participants in a recent cohort study of benzene-exposed workers in China. The data will be used by the NCI to examine risk among workers exposed to low levels of benzene, and to characterize the dose and time-specific relationship between benzene exposure and disease risk.

**Frequency of Response:** One-time study.  
**Affected Public:** Individuals or households.  
**Type of Respondents:** Workers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 515; *Estimated Number of Responses per Respondent:* One; *Average Burden Hours per Response:* 0.425; and *Estimated Total Annual Burden Hours Request:* 219.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

#### Request for comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection or information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Direct comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Richard Hayes, Project Officer, National Cancer Institute, Executive Plaza North, Room 418, Rockville, Maryland 20892-7364, or call non-toll-free number (301) 496-9093, or FAX your request to (301) 402-1819, or E-mail your request,

including your address to HayesR@epndce.nci.nih.gov.

**Comments Due Date:** Comments regarding this information collection are best assured of having their full effect if received on or before February 23, 1998.

Dated: December 13, 1998.

**Reesa L. Nichols,**

*OMB Project Clearance Liaison.*

[FR Doc. 98-1554 Filed 1-22-98; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on January 20-21, 1998, Conference Rooms E1-E2, Building 45, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. until adjournment on January 21, 1998, for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on January 20, 1:00 p.m. to recess for the review, discussion and evaluation of individual grant applications. These applications and information concerning individuals associated with the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20891 (telephone (301) 496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: January 15, 1998.

**LaVerne Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98-1555 Filed 1-22-98; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the Merit Review Ad Hoc Subcommittee of the National Advisory Council on Alcohol Abuse and Alcoholism.

**Purpose/Agenda:** To review and evaluate grant applications.

**Name of Committee:** Merit Review Ad Hoc Subcommittee of the National Advisory Council on Alcohol Abuse and Alcoholism.

**Date of Meeting:** February 11, 1998.

**Time:** 7:00 p.m. to adjournment.

**Place of Meeting:** Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

**Contact Person:** Mark Green, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892-7003, 301-443-2860.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; National Institutes of Health)

Dated: January 8, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98-1556 Filed 1-22-98; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the notice of the February 6 meeting of the National Institute on Deafness and Other Communication Disorders Review Committee which was published on January 14, 1998, 63 FR 2252.

The meeting was announced as a meeting of the Communication Disorders Review Committee. The meeting is actually a meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 15, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98-1557 Filed 1-22-98; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meetings:

**Purpose/Agenda:** To review and evaluate grant applications.

**Name of Committee:** National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

**Date:** February 11, 1998.

**Time:** 1 pm to adjournment.

**Place:** 6120 Executive Blvd., Rockville MD 20892, (telephone conference call)/

**Contact Person:** Melissa J. Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892-7180, 301-496-8683.

**Name of Committee:** National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

**Date:** March 3, 1998.

**Time:** 4 pm to adjournment.

**Place:** 6120 Executive Blvd., Rockville MD 20892 (telephone conference call).

**Contact Person:** Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive

Boulevard, MSC 7180, Bethesda MD 20892-7180, 301-496-8683.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 15, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98-1558 Filed 1-22-98; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

**Name of Committee:** National Institute on Deafness and Other Communication Disorders, Communication Disorders Review Committee.

**Date:** March 4-6, 1998.

**Time:** 8:00 a.m.-5:00 p.m.

**Place:** Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

**Contact Person:** Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892-7180, 301-496-8683.

**Purpose/Agenda:** To review and evaluate grant applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 15, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98-1559 Filed 1-22-98; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4263-N-73]

### Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: March 24, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451-7th Street, S.W., Room 7230, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** James Selvaggi at (202) 708-3773 x4647 for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Empowerment Zone/Enterprise Community Application Form.

*OMB Control Number, if applicable:* 2506-0148.

*Description of the need for the information and proposed use:* The application information collected is reviewed by HUD and USDA to recommend applicants for 1998 designation of either an urban or a rural Empowerment Zone. Twenty (20) Empowerment Zones will be designated in 1998 (15 urban and 5 rural). The annual progress reports will be used as required by the statute to determine the success of each designee in meeting its established benchmarks and in evaluating the program as a whole.

*Agency form numbers, if applicable:* HUD-40003.

*Members of affected public:* Units of local government and states, applying jointly.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response: *Nomination*—number of responses—300; hours of response—50; *Annual report*—15 (one annual progress report per grantee); 15 hours of response per grantee.

*Status of the proposed information collection:* Current approval will expire 2/15/98.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 15, 1998.

**Saul N. Ramirez, Jr.,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 98-1616 Filed 1-22-98; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4263-N-74]

### Notice of Proposed Information; Collection for Public Comments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: March 24, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Mildred M. Hamman, Report Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4328, Washington, DC 20410-5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708-3642, extension 4128, for copies of the proposed forms not other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g. permitting electronic submission of responses.

This notice also lists the following information.

*Title of Proposal:* Application Requirements, Public and Indian Housing (PIH) Youth Sports Program.

*OMB Control Number:* 2577-0140.

*Description of the need for the information and proposed use:* The Youth Sports Program requires eligible applicants to submit information to HUD for review and evaluation against the selection criteria contained in the Notice of Funding Announcement (NOFA) which is published in the **Federal Register**, for possible funding. Approved applicants are rated and ranked by HUD, approved/disapproved for funding, and notified of their selection/rejection.

*Agency form numbers, if applicable:* Forms HUD-2880, HUD-50070, HUD-50071 (SF-24, SF-LLL).

*Members of the affected public:* State or Local Governments, Non-profit institutions.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of responses:* 500 respondents, each Fiscal Year if funds are appropriated by Congress, 24 average hours per response, 12,000 hours for a total reporting burden.

*Status of the proposed information collection:* Reinstatement.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 20, 1998.

**Kevin Emanuel Marchman,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 98-1617 Filed 1-22-98; 8:45 am]

BILLING CODE 4210-33-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4235-N-39]

### Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1226; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also

published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions

or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE*: Mr. Bob Swieconeck, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314-1000; (202) 761-1749; *GSA*: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501-2059; *NAVY*: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-7342; (These are not toll-free numbers).

Dated: January 15, 1998.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

#### **Title V, Federal Surplus Property Program Federal Register Report for 01/23/98**

##### **Suitable/Available Properties**

###### *Buildings (by State)*

###### **Hawaii**

Bldg. 79E  
Ford Island, Naval Station  
Pearl Harbor Co: Honolulu HI 96860-  
Landholding Agency: Navy  
Property Number: 779810016  
Status: Excess  
Comment: 54,720 sq. ft., 2 floors, possible lead paint/PCB, most recent use—storage, off-site use only

Bldg. 79W  
Ford Island, Naval Station  
Pearl Harbor Co: Honolulu HI 96860-  
Landholding Agency: Navy  
Property Number: 779810017  
Status: Excess  
Comment: 47,385 sq. ft., needs rehab, possible lead paint/PCB, most recent use—storage, off-site use only

###### **Pennsylvania**

Dwelling #1  
Crooked Creek Lake  
Ford City Co: Armstrong PA 16226-8815  
Landholding Agency: COE  
Property Number: 319740002  
Status: Excess  
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Crooked Creek Lake  
Ford City Co: Armstrong PA 16226-8815  
Landholding Agency: COE  
Property Number: 319740003  
Status: Excess  
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #3  
Crooked Creek Lake  
Ford City Co: Armstrong PA 16226-8815  
Landholding Agency: COE  
Property Number: 319740004  
Status: Excess  
Comment: 1847 sq. ft., most recent use—office, good condition, off-site use only

Govt Dwelling  
East Branch Lake  
Wilcox Co: Elk PA 15870-9709  
Landholding Agency: COE  
Property Number: 319740005  
Status: Underutilized  
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1  
Loyalhanna Lake  
Saltsburg Co: Westmoreland PA 15681-9302  
Landholding Agency: COE  
Property Number: 319740006  
Status: Excess  
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Loyalhanna Lake  
Saltsburg Co: Westmoreland PA 15681-9302  
Landholding Agency: COE  
Property Number: 319740007  
Status: Excess  
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1  
Woodcock Creek Lake  
Saegertown Co: Crawford PA 16433-0629  
Landholding Agency: COE  
Property Number: 319740008  
Status: Excess  
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Lock & Dam 6, 1260 River Road  
Freeport Co: Armstrong, PA 16229-2023  
Landholding Agency: COE  
Property Number: 319740009  
Status: Excess  
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Virginia  
Bldg. X18  
Naval Station, Norfolk  
Norfolk, VA 23511-  
Landholding Agency: Navy  
Property Number: 779810036  
Status: Underutilized  
Comment: 31,600 sq. ft., 2 floors, most recent use—office, poor condition, presence of asbestos, off-site use only

###### *Land (by State)*

New Hampshire  
Land—7.97

Army Reserve Center, Industrial Park  
Belmont Co: Belnap, NH  
Landholding Agency: GSA  
Property Number: 219710118  
Status: Excess  
Comment: 7.97 acres, severe sloping  
GSA Number: 1-D-NH-0489

#### Unsuitable Properties

##### *Buildings (by State)*

##### Michigan

Harbor Beach Coast Guard  
Harbor Beach Co: Huron, MI 48441-  
Landholding Agency: GSA  
Property Number: 549810004  
Status: Excess  
Reason: Within 2,000 ft. of flammable or  
explosive material Extensive deterioration  
GSA Number: 1-U-MI-492C

##### Nevada

Bldg. 62  
Naval Air Station, Fallon  
Fallon Co: Churchill, NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810018  
Status: Excess  
Reason: Secured Area

Bldg. 67  
Naval Air Station, Fallon  
Fallon Co: Churchill, NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810019  
Status: Excess  
Reason: Secured Area

Bldg. 68  
Naval Air Station, Fallon  
Fallon Co: Churchill, NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810020  
Status: Excess  
Reason: Secured Area

Bldg. 89  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810021  
Status: Excess  
Reason: Secured Area

Bldg. 90  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810022  
Status: Excess  
Reason: Secured Area

Bldg. 224  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810023  
Status: Excess  
Reason: Secured Area

Bldg. 225  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810024  
Status: Excess  
Reason: Secured Area

Bldg. 225A  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy

Property Number: 779810025  
Status: Excess  
Reason: Secured Area  
Bldg. 373  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810026  
Status: Excess  
Reason: Secured Area

Bldg. 401  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810027  
Status: Excess  
Reason: Secured Area

Bldg. 402  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810028  
Status: Excess  
Reason: Secured Area

Bldg. 405  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810029  
Status: Excess  
Reason: Secured Area

Bldg. 407  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810030  
Status: Excess  
Reason: Secured Area

Bldg. 410  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810031  
Status: Excess  
Reason: Secured Area

Bldg. 411  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810032  
Status: Excess  
Reason: Secured Area

Bldg. 412  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810033  
Status: Excess  
Reason: Secured Area

Bldg. 430  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810034  
Status: Excess  
Reason: Secured Area

Bldg. 802  
Naval Air Station, Fallon  
Fallon Co: Churchill NV 89496-5000  
Landholding Agency: Navy  
Property Number: 779810035  
Status: Excess  
Reason: Secured Area

##### Virginia

Bldg. 11A  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810037  
Status: Excess  
Reason: Extensive deterioration

Bldg. 167  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810038  
Status: Excess  
Reason: Extensive deterioration

Bldg. 378  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810039  
Status: Excess  
Reason: Extensive deterioration

Bldg. 400  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810040  
Status: Excess  
Reason: Extensive deterioration

Bldg. 504  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810041  
Status: Excess  
Reason: Extensive deterioration

Bldg. 543  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810042  
Status: Excess  
Reason: Extensive deterioration

Bldg. 558  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810043  
Status: Excess  
Reason: Extensive deterioration

Bldg. 1326  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810044  
Status: Excess  
Reason: Extensive deterioration

Bldg. 1440  
Norfolk Naval Shipyard  
Portsmouth VA 23709-5000  
Landholding Agency: Navy  
Property Number: 779810045  
Status: Excess  
Reason: Extensive deterioration

##### *Land (by State)*

##### Pennsylvania

Grays Landing  
Tract B, 101-07  
Co: Fayette PA  
Landholding Agency: GSA  
Property Number: 549810005  
Status: Excess  
Reason: Other

Comment: landlocked  
 GSA Number: 4-D-PA-784  
 [FR Doc. 98-1522 Filed 1-22-98; 8:45 am]  
 BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[WO-220-1060-00-24 1A]

### Notice of Reestablishment of the Wild Horse and Burro Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Reestablishment of the Wild Horse and Burro Advisory Board.

**SUMMARY:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (5 U.S.C. App.). Pursuant to Section 7 of the Wild Free-Roaming Horse and Burro Act (Pub. L. 92-195), notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture are reestablishing the Wild Horse and Burro Advisory Board to provide advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

**FOR FURTHER INFORMATION CONTACT:** Bud C. Cribley, Wild Horse and Burro Program Specialist, Department of the Interior, Bureau of Land Management, Room 314, 1620 L Street, N.W., Washington, D.C. 20006, (202) 452-5073.

### Certification

I hereby certify that the reestablishment of the Wild Horse and Burro Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Dated: December 23, 1997.

**Bruce Babbitt,**

Secretary of the Interior.

[FR Doc. 98-1550 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-84-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Revise the U.S. Fish and Wildlife Service Manual and Establish Regulations as They Relate to the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act) was signed by President Clinton on October 9, 1997. The Refuge Improvement Act amends and builds upon the National Wildlife Refuge System Administration Act of 1966 (NWRSA), (16 U.S.C. 668dd *et seq.*). This notice advises the public that the U.S. Fish and Wildlife Service (Service) will be developing new or revised policies pursuant to the Refuge Improvement Act. The key policy areas to be addressed are listed later in **SUPPLEMENTARY INFORMATION**. This notice also identifies opportunities for public review and comment.

Interested persons contacting the Service as described in **ADDRESSES** below, will be provided draft Service Manual chapters as they are prepared and will be notified of due dates for written comments. Final chapters will be issued following review of public comments. Proposed regulations will be developed through the rule making process.

**ADDRESSES:** Requests to receive copies of the specific draft Service Manual chapters as they are prepared should be sent via mail to: Refuge Improvement Act Project, U.S. Fish and Wildlife Service, Division of Refuges, 4401 N. Fairfax Dr., Rm. 670, Arlington, VA 22203, Fax (703) 358-2248, or email to: Refuge\_Improvement\_Act@FWS.gov.

Each request should include a complete mailing address to which the draft chapters will be sent.

**SUPPLEMENTARY INFORMATION:** The nearly 93 million acre National Wildlife Refuge System (Refuge System) has been administered, since its inception, under a collection of Presidential proclamations, Executive Orders, administrative orders, and laws. Until 1966, and enactment of the National Wildlife Refuge System Administration Act (NWRSA), there was no single Federal law that governed administration of the Refuge System. The NWRSA provided guidance for refuge management; but in the 32 years since its passage, Refuge System acreage

has grown more than threefold, wildlife management issues have increased in complexity and controversy, and the demands for recreational and economic uses of refuges have increased substantially.

The Refuge Improvement Act amends and builds upon the NWRSA in a manner that provides an "Organic Act" for the Refuge System similar to those laws which exist for other Federal Lands. The Refuge Improvement Act will serve to ensure that the Refuge System is effectively managed as a national system of lands, waters, and interests for the protection and conservation of our nation's wildlife resources.

The Refuge Improvement Act's principal focus is to establish clearly the wildlife conservation mission of the Refuge System, provide guidance to the Secretary of the Interior for management of the Refuge System, provide a mechanism for unit-specific planning, and give managers clear direction and procedures for making determinations regarding wildlife conservation and public uses of units of the Refuge System.

The Service will be implementing the Refuge Improvement Act by developing new or revised Service Manual chapters for the Refuge System. All units within the Refuge System will be managed with regard to these chapters which will guide management strategies for achieving individual unit purposes and the Refuge System mission.

Key issues to be addressed in specific Service Manual chapters include:

- Biological integrity of the Refuge System;
- Appropriate general public uses for the System;
- Implementation of the compatibility test; and
- Comprehensive conservation planning.

Public input into the development of these key Service Manual chapters is essential. The Service will provide these draft chapters to interested agencies and individuals as described above in **ADDRESSES**. These draft chapters will also be available on the National Wildlife Refuge System web site: (<http://refuges.fws.gov>) during the pre-rulemaking public review and comment period. Any resulting proposed regulations will be available for public review and comment through the rule making process.

Due to the varying levels of complexity of issues, some chapters will require more time for development than others. Therefore, specific draft chapters will be made available to the public as they are prepared. The Refuge

Improvement Act requires the Service to establish new compatibility policy and regulations within two years of enactment. There are no other directives in the Refuge Improvement Act for specific policy updates; however, the Service desires to move forward expeditiously on the specific policies listed in this notice to incorporate the most important provisions of the Refuge Improvement Act into all management functions. The Service estimates that draft Service Manual chapters for these issues will be available for public review and comment beginning in May 1998.

This notice and the public participation in this implementation process is being conducted in accordance with the policy and rulemaking requirements of the Administrative Procedures Act (5 U.S.C. 553), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57), Executive Order 12996, and associated Service policies and procedures.

Dated: January 16, 1998.

**Donald Barry,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 98-1607 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

## DEPARTMENT OF AGRICULTURE

### Forest Service

[CO-030-5101-00-YCKD; COC-51280]

#### Notice of Availability of the Draft Supplement to the Final Environmental Impact Statement for a TransColorado Gas Transmission Project; Colorado and New Mexico

**AGENCY:** Bureau of Land Management, Department of the Interior, and Forest Service, Department of Agriculture.

**ACTION:** Notice of Availability of a Supplement to The Final Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico.

**SUMMARY:** In accordance with the National Environmental Policy Act, the Bureau of Land Management (BLM), as lead agency, and in cooperation with the U.S. Forest Service (USFS) has prepared a Draft Supplement (Supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission

(TransColorado) project on federal lands in Colorado and New Mexico.

TransColorado is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The Supplement addresses the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 ft.) of the approved pipeline and right-of-way (ROW) grant COC-51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or, proposed ROW route changes or minor realignments. This Supplement will also address the impacts of the construction and use minor realignments and alternative temporary work areas in unspecified locations. These unspecified temporary work areas and minor realignments will be addressed to accommodate conditions that might be encountered during construction. Also addressed in the Supplement are proposed modifications to several environmental protection measures contained in the original right-of-way (ROW) grant and Record of Decision (ROD).

Please focus comments on the proposed actions and alternatives in the Supplement to the FEIS.

**DATES:** The 60-day public comment period for the Draft Supplement runs from January 23, 1998 until March 9, 1998.

Written comments on the Draft Supplement must be submitted or postmarked no later than March 9, 1998. Written comments may also be presented at the public meetings to be held on February 17, 1998, at 7:00 p.m. in the Double Tree Inn, 501 Camino del Rio in Durango, Colorado; on February 18, 1998 at 7:00 p.m. at the Ponderosa Restaurant, 108 South 8th in Dolores, Colorado; and on February 19, 1998 at 7:00 pm at the Holiday Inn, 755 Horizon Drive in Grand Junction, Colorado.

**ADDRESSES:** Any comments on this document should be sent to Bill Bottomly, TransColorado Project Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, CO 81401. The Draft Supplement to the FEIS and the FEIS are available for public review at the above address, and at the following offices of the BLM and USFS: the Grand Junction District

Office, the Montrose District Office, the Grand Mesa/Uncompahgre/Gunnison National Forest Office, the San Juan National Forest/San Juan Resource Area office, and the Farmington District Office.

Public reading copies are available at the federal depository libraries in Colorado and New Mexico and public libraries within San Juan County, New Mexico, and La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta, Mesa, Garfield and Rio Blanco Counties, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Bill Bottomly (970) 240-5337, Ilyse Auringer (970) 385-1341, or Steve Hemphill (970) 874-6633.

**SUPPLEMENTARY INFORMATION:** After preparing a Draft and Final Environmental Impact Statement in 1992, the BLM and the USFS signed Records of Decision on December 1, 1992 and issued a ROW grant and adjacent Temporary Use Permit (TUP) for subsequent construction, operation and maintenance of the 292 mile-long TransColorado Gas Transmission pipeline from Meeker, Colorado to Bloomfield, New Mexico. Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 567), BLM issued a 50 foot-wide ROW grant on December 4, 1997, accompanied by a 25 foot-wide TUP, excepting 1.7 miles near Grand Junction, Colorado. The FERC issued TransColorado a Certificate of Public Convenience and Necessity on June 3, 1994. TransColorado completed the 22.5 mile Phase I of the project in December, 1996. The proponent is now prepared to construct the remainder of the pipeline during 1998.

Public participation has occurred throughout the Supplement to the FEIS process. The Notice of Intent (NOI) to prepare this Supplement to the FEIS was published in the **Federal Register** on November 21, 1997. "Open House" forums were held from October 21 through December 10, 1997 at Norwood, Durango, Delta, Rangely, Dolores, and Grand Junction, Colorado. Field trips to locations on the San Juan National Forest were offered on November 15 and 22, 1997.

Signed: January 14, 1998.

**Jamie E. Connell,**

*Associate District Manager, Montrose District, BLM.*

**Robert L. Storch,**

*Forest Supervisor, Grand Mesa/Uncompahgre/Gunnison National Forests.*

[FR Doc. 98-1542 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-JB-P

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[NM-910-08-1020-00]****New Mexico Resource Advisory Council Meeting.****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Council meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on March 5 and 6, 1998 at the Western Sizzlin Restaurant, 1010 South White Sands, Alamogordo, NM. The agenda for the RAC meeting will include agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last two RAC meetings, of November 20-21, 1997 in Albuquerque, MN., and February 20, 1998 in Santa Fe, NM., briefings and discussions on the status of the NEPA process for the RAC Standards for Public Land Health and Guidelines for Livestock Grazing Management and other NEPA concerns, on establishment of RAC Subgroups for the BLM Field Offices, on the Lesser Prairie Chicken, on the McGregor Range Withdrawal, on implementation of the Standards for Public Land Health and Guidelines for Livestock Grazing Management and on other items as appropriate. An optional field tour will be available for RAC members to McGregor Range on the morning of Saturday, March 7, 1998. The tour will take most of the morning. Time and location to meet for the tour will be established after discussion with RAC members during the March 5 and 6, 1998 meeting.

The meeting will begin on March 5, 1998 at 8:30 a.m. The meeting is open to the public. The time for the public to address the RAC is on Thursday, March 5, 1998, from 3:00 p.m. to 5:00 p.m. The RAC may reduce or extend the end time of 5:00 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on March 6, 1998, will be from 8:00 a.m. to 3:00 p.m. The

end time of 3:00 p.m. for the meeting may be changed depending on the work remaining for the RAC.

**FOR FURTHER INFORMATION CONTACT:** Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, telephone (505) 438-7436.

**SUPPLEMENTARY INFORMATION:** The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: January 16, 1998.

**Richard A. Whitley,**  
*Deputy State Director.*

[FR Doc. 98-1599 Filed 1-16-98; 8:45 am]

**BILLING CODE 4310-FB-M**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[CO-010-07-1020-00-241A]****Northwest Colorado Resource Advisory Council Meeting****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Meeting and Televideo Conference.

**SUMMARY:** The next meeting of the Northwest Colorado Resource Advisory Council will be held on Friday, February 20, 1998, in Grand Junction, Colorado, following a televideo broadcast from the BLM National Training Center in Phoenix, Arizona.

**DATES:** Friday, February 20, 1998.

**ADDRESSES:** For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244-3037.

**SUPPLEMENTARY INFORMATION:** The meeting will follow a BLM National Resource Advisory Council televideo broadcast. The broadcast will air from 9:30 a.m. to 12:00 noon in the BLM Grand Junction District Office, 2850 H Road, Grand Junction, Colorado. The Northwest RAC meeting will be from 12:45 p.m. to 4:45 p.m. Agenda items

include an update of the roadless inventory review and subcommittee reports on fire, land exchanges, and recreation.

The televideo conference and the resource advisory council meeting are open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 13, 1998.

**Mark T. Morse,**

*District Manager, Craig and Grand Junction Districts.*

[FR Doc. 98-1630 Filed 1-22-98; 8:45 am]

**BILLING CODE 4310-70-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[NV-050-1020-001]****Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Resource Advisory Council Meeting Locations and Times.

**DATES:** Date is February 26, 1998, from 1:00 p.m. to approximately 4 p.m. and will reconvene on February 27, 1998 and meet from 8 a.m. to 4:40 p.m. The public comment period will begin at 8:30 a.m. on February 27, 1998.

**ADDRESSES:** The council will meet at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, NV 89108-2135.

**FOR FURTHER INFORMATION CONTACT:** Phillip L. Guerrero, Las Vegas Field Office, Public Affairs Officer, telephone: (702) 647-5046.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated above. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Phillip L. Guerrero at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647-5000.

Dated: January 15, 1998.

**Phillip L. Guerrero,**  
Public Affairs Officer.

[FR Doc. 98-1633 Filed 1-22-98; 8:45 am]  
BILLING CODE 4310-HC-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-020-1430-01; N-62221]

#### Notice of Realty Action for Proposed Occupancy Lease of Public Lands for Commercial Photography Camp, and Continued Use as a Base Camp in Conjunction With Livestock Management Activities, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** The proposed leasing of public land for a year round camp for conducting commercial photography instruction, as well as for continued use as a base camp in conjunction with existing livestock management activities.

The site proposed for leasing under provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920 is described as follows:

#### Mount Diablo Meridian, Nevada

T. 46 N., R. 32 E.,

Sec. 32: SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

The proposal would include approximately 1 acre.

The parcel affected by the proposed lease is located near Gartiez Spring in the Bilk Creek Mountain Range. No additional development/construction, or surface disturbance of the area, would occur as a result of this lease.

No other proposals will be accepted. The proposed parcel is encumbered by a cabin and ancillary facilities, owned by the applicant and permitted under Section 4 of the Taylor Grazing Act. The proposal is to expand the existing authorized uses of the parcel to include a commercial photography camp. Therefore, no other proposals would be acceptable.

The proposal would be authorized by a lease for a term of 10 years. The lease could be renewed at the discretion of the authorized officer.

The proposed parcel has not been appraised at this time, so no estimate of rent is available. However, rent will not be less than the appraised fair market value.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445. In the absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

**FOR FURTHER INFORMATION CONTACT:** Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada, 89445, or call (702) 623-1500.

Dated: January 9, 1998.

**Ron Wenker,**

District Manager, Winnemucca, Nevada.

[FR Doc. 98-1562 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-HC-U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT080-08-1020 00 241A]

#### Book Cliffs Resource Management Plan

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of intent to amend plan.

**SUMMARY:** This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to do a plan amendment for the Book Cliffs Resource Management Plan (RMP) located in Uintah County, Utah.

**DATES:** The comment period for the proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Duane De Paepe, Planning and Environmental Coordinator, Vernal Field Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078. Existing planning documents and information are available at the above address or telephone (435) 781-4403. Comments on the proposed plan amendment should be sent to the above address.

**SUPPLEMENTARY INFORMATION:** The BLM is proposing to amend the Book Cliffs RMP, which includes public and Ute Indian tribal lands in Uintah County, Utah. The proposed amendment would authorize oil and gas leasing and development in the Hill Creek Federal Oil and Gas Unit located approximately 35 miles south of Vernal, Utah, encompassing approximately eight square miles (or 5,350 acres) within Sections 27 through 34 of Township 10 South, Range 20 East. Approximately 78 percent (4,150 acres) of the project area is located on lands belonging to the Uintah and Ouray Indian Reservation. Approximately 18 percent (960 acres) is located on public lands administered by the BLM, and the remaining approximately 4 percent (240 acres) is located on private lands. An environmental assessment is being prepared to analyze the impacts of this proposal and alternatives.

Dated: January 9, 1998.

**G. William Lamb,**

Utah State Director.

[FR Doc. 98-1629 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-DO-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-957-1220-00]

#### Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 15, 1998.

The plat representing the dependent resurvey of portions of Mineral Survey No. 2153, and a survey of lot 22 in section 14, T. 24 N., R. 1 E., Boise Meridian, Idaho, Group 1003, was accepted January 15, 1998. This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709-1657.

Dated: January 15, 1998.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 98-1632 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-66-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-957-00-1420-00: G8-0074]

#### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, on or before February 23, 1998.

#### Williamette Meridian

##### Oregon

T. 16 S., R. 5 E., accepted November 25, 1997

T. 41 S., R. 43 E., accepted November 25, 1997

T. 39 S., R. 4 W., accepted November 21, 1997

T. 20 S., R. 6 W., accepted December 30, 1997

T. 35 S., R. 6 W., accepted December 24, 1997

T. 28 S., R. 6 W., accepted November 12, 1997

T. 31 S., R. 10 W., accepted November 21, 1997

##### Washington

T. 6 N., R. 19 E., accepted November 21, 1997

T. 30 N., R. 7 W., accepted December 15, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th

Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. **FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: January 9, 1998.

**Robert D. DeViney, Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 98-1634 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-33-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

**DATES:** Submit written comments by March 24, 1998.

**ADDRESSES:** Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170-4817.

#### FOR FURTHER INFORMATION CONTACT:

Alexis London, Rules Processing Team, telephone (703) 787-1600. You may also

contact Alexis London to obtain a copy of this collection of information.

#### SUPPLEMENTARY INFORMATION:

**Title:** 30 CFR 250, Subpart P, Sulphur Operations.

**OMB Control Number:** 1010-0086.

**Abstract:** The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. To carry out these responsibilities, MMS has issued regulations at 30 CFR Part 250. Subpart P, Sulphur Operations, of that part contains requirements and procedures for sulphur drilling, well-completion, and well-workover operations and production in the OCS.

The MMS uses the information collected under subpart P to ensure that sulphur operations and production in the OCS are carried out in a manner that is safe and pollution free. If respondents submit proprietary information, it will be protected under 30 CFR 250.18. Data and information to be made available to the public. No items of a sensitive nature are collected. The requirement to respond is mandatory.

**Estimated Number and Description of Respondents:** Currently there is only one active Federal OCS sulphur lease operator.

**Frequency:** On occasion, varies by section.

**Estimated Annual Reporting and Recordkeeping Hour Burden:** There are 447 burden hours currently approved for this collection.

**Comments:** The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will also consult with the respondent on the accuracy of the burden estimate. As a result of the consultation and comments we receive, we will make any necessary adjustments for our submission to OMB. In calculating the burden, MMS may have assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden for the collection of this information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

**MMS Information Collection Clearance Officer:** Jo Ann Lauterbach, (202) 208-7744.

Dated: January 12, 1998.

**E. P. Danenberger,**

*Chief, Engineering and Operations Division.*  
[FR Doc. 98-1628 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-MR-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Umatilla Basin Project, Umatilla, OR

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare an environmental impact statement (EIS) on implementing Phase III of the Umatilla Basin Project. The Phase III study will evaluate the potential for modifying and expanding Reclamation's existing Umatilla Basin Project (Project) to provide additional flows in the Umatilla River for anadromous fish. In addition, the study will evaluate potential measures to improve municipal and industrial water supplies in the study area. Alternatives, including no action, will be evaluated in the EIS.

#### ADDRESSES:

Bureau of Reclamation, Pacific Northwest Regional Office, 1150 N Curtis Road, Suite 100, Boise, ID 83706-1234.

Bureau of Reclamation, Upper Columbia Area Office, P.O. Box 1749, Yakima, WA 98907-1749.

#### FOR FURTHER INFORMATION CONTACT:

For information on the study, contact Robert Hamilton, Activity Manager, at (208) 378-5087 or at the above regional office address. For information regarding the NEPA process, contact John Tiedeman, Environmental Specialist, at (509) 575-5848 ext. 238 or at the above area office address.

#### SUPPLEMENTARY INFORMATION:

Authorization for this study is contained in the Feasibility Studies Act of 1966, Public Law 89-561. The study will build upon prior activities authorized as part of the Project. These activities meet some but not all of the fishery needs of the basin. Recent data collected from monitoring of instream flows indicate that the restoration of flows resulting from Project activities to date will be less than originally estimated.

This study will evaluate the potential of providing water from the Columbia River to the Westland Irrigation District in exchange for water normally diverted from the Umatilla River. This would leave additional flows for resident and anadromous fish species in the river downstream of the Westland Irrigation District diversion. Restoration of the fishery would be of major cultural and

economic importance to the Confederated Tribes of the Umatilla Reservation for whom anadromous fisheries are Indian Trust Assets. Other opportunities for instream enhancement and opportunities for enhancement of municipal and industrial water supplies will also be evaluated.

Reclamation plans to conduct public scoping meetings to identify issues and concerns will be used in the development of alternatives. The dates, times, and locations of public scoping meetings will be noted in newspapers of general circulation in the Pendleton and Hermiston, Oregon, areas and surrounding communities.

Dated: January 15, 1998.

**John W. Keys, III,**

*Regional Director, Pacific Northwest Region.*

[FR Doc. 98-1600 Filed 1-22-98; 8:45 am]

BILLING CODE 4310-94-M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Agency Information Collection Activities; Proposed Collection; Comment Request

**ACTION:** Renew Collections: Comment Request.

**SUMMARY:** U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (1) Whether the continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (2) the accuracy of the burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments regarding this information collection are best assured of having their full effect if received within 60 days of this notification.

**ADDRESSES INFORMATION TO:** Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, D.C. 20523, 202-712-1365 or via e-mail [bjohnson@usaid.gov](mailto:bjohnson@usaid.gov).

**SUPPLEMENTARY INFORMATION:**

OMB Number: OMB 0412-0550.

Form Numbers: AID 1570-13 and 1570-14.

Title: Narrative/Time-Line and Report on Commodities (Quarterly Reports).

Type of Submission: Renew.

Purpose: The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions, independent reviewers and ASHA need to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden:

Respondents: 70.

Total annual responses: 1,470.

Total annual hours requested: 735.

Dated: January 14, 1998.

**Willette L. Smith,**

Chief, Information and Records Division  
Bureau for Management, Office of  
Administrative Services.

[FR Doc. 98-1576 Filed 1-22-98; 8:45 am]

BILLING CODE 6116-01-M

extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11-072, Washington DC, 20523-2110, telephone (202) 712-1436, fax (202) 216-3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11-005, Washington DC, 20523-2110, telephone him at (202) 712-5571 or fax (202) 216-3010.

**Tracy, Atwood,**

AID Designated Federal Officer, (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 98-1575 Filed 1-22-98; 8:45 am]

BILLING CODE 6116-01-M

**DEPARTMENT OF LABOR****Employment Standards Administration**

**Wage and Hour Division; Minimum  
Wages for Federal and Federally  
Assisted Construction; General Wage  
Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be

prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

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**INTERNATIONAL DEVELOPMENT  
COOPERATION AGENCY**

**Agency for International Development  
Board for International Food and  
Agricultural Development Interim  
Advisory Committee on Food Security;  
Notice of Meeting**

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the Board for International Food and Agricultural Development (BIFAD) Interim Advisory Committee Meeting. The meeting will be held from 9:00 a.m. to 5:00 p.m. on February 11, 1998, at the Pan-American Health Organization, located at 525 23rd Street N.W., Washington DC, 20523, in Conference Room B.

The Interim Advisory Committee will provide input to the U.S. Government on the Development of a long-term action plan in support of commitments made in the U.S. Country Paper and at the World Food Summit.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

#### Volume I:

None.

#### Volume II:

None.

#### Volume III:

None.

#### Volume IV:

None.

#### Volume V:

None.

#### Volume VI:

None.

#### Volume VII:

None.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by

each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 16th day of January 1998.

**Carl J. Poleskey,**  
*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 98-1462 Filed 1-22-98; 8:45 am]

BILLING CODE 4510-27-M

### DEPARTMENT OF LABOR

#### Occupational Safety and Health Administration

#### Maritime Advisory Committee for Safety and Health; Change of Location for Committee Meeting

This notice is to advise the public that the January 28 and 29, 1998 advisory committee meeting will be held at a new address. This two-day meeting, previously announced in the **Federal Register** of December 29, 1997 (62 FR 67666), has been relocated to the Holiday Inn Hotel & Suites, 625 First Street, Alexandria, Virginia 22314, telephone (703) 548-6300. The meeting will be held from 9:00 a.m. to approximately 5:00 p.m. each day. This relocated address is two blocks away from the original location.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Liberatore, Office of Maritime Standards, tel. (202) 219-7234, ext. 141.

Signed at Washington, DC this 20th day of January, 1998.

**Larry Liberatore,**  
*Director, Office of Maritime Standards, Occupational Safety and Health Administration.*

[FR Doc. 98-1626 Filed 1-22-98; 8:45 am]

BILLING CODE 4510-26-M

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98-006)]

#### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity

Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee.

**DATES:** Wednesday, February 4, 1998, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** NASA Headquarters, Room MIC 6, 300 E Street SW, Washington DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Candace Livingston, Code UX, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0697.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

- Stewardship Accounting Standard
- Access to Space
- Commercialization Team Activities and Findings
- Selection/Transition Criteria
- Overview of three Commercial Space Centers

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1998.

**Alan M. Ladwig,**  
*Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.*

[FR Doc. 98-1536 Filed 1-22-98; 8:45 am]

BILLING CODE 7510-01-M

### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

#### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration, Office of Records Services.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction

of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before March 9, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, telephone (301) 713-7110.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the

records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

#### Schedules Pending

1. General Accounting Office (N1-411-97-1). Updated comprehensive records schedule.
2. Department of Justice (N1-060-98-1). Facilitative records and training material accumulated by the International Criminal Investigation Training Program.
3. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1-436-97-2). Special Occupational Tax System and Federal Excise Tax System.
4. Environmental Protection Agency (N1-412-97-2). Waste Isolation Pilot Plants certification records (official docket copy will be preserved).
5. Federal Mine Safety and Health Review Commission (N1-470-98-1). Working files of case-related records of the Chief Administrative Law Judge, Administrative Law Judges, and law clerk of the Chief Judge.
6. U.S. Office of Government Ethics (N1-522-98-2). Office of General Counsel and Legal Policy trust files.
7. Panama Canal Commission (N1-185-98-2). Expenditure accounting records.

Dated: January 16, 1998.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 98-1535 Filed 1-22-98; 8:45 am]

BILLING CODE 7515-01-P

#### NATIONAL SCIENCE FOUNDATION

##### Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Alan T. Waterman Award Committee (#1172).

*Date and Time:* Monday, February 9, 1998; 8 a.m.-3 p.m.

*Place:* Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/306-1096.

*Purpose of Meeting:* To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

*Agenda:* To review and evaluate nominations as part of the selection process for awards.

*Reason for Closing:* The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: January 20, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1566 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

#### NATIONAL SCIENCE FOUNDATION

##### Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

*Date and Time:* February 11-12, 1998; 8:00 a.m.-6:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306-1318.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSE for financial support.

*Agenda:* To review and evaluate proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 20, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1569 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

**NATIONAL SCIENCE FOUNDATION****Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors, Networking Research Program (1115).

*Date and Time:* February 2-3, 1998; 8:30 am-5:00 pm each day.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Tatsuya Suda, Program Director, Division of Advanced Networking Infrastructure & Research, 4201 Wilson Boulevard, Arlington, VA 22230. Phone: (703) 306-1950.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Agenda:* To provide oversight review of the Networking Research Program.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

*Reason for Late Notice:* Meeting Notice was inadvertently misplaced.

Dated: January 16, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1563 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

*Contact Person:* Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, Va. 22230. Phone: (703) 306-1382.

*Minutes:* May be obtained from the contact person at the above address.

*Purpose of Meeting:* To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

**Agenda**

1. Briefing on congressional activities related to science and engineering, including briefing on FY 1999 congressional budget;
2. NSF's GPRA Strategic Plan review;
3. Follow up on development of a Strategic Plan for the Committee and other items from previous meetings; and
4. Briefings and discussions on capacity building, disability issues, and education partnerships.

Dated: January 15, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1567 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

Dated: January 16, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1565 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

**NATIONAL SCIENCE FOUNDATION****Special Emphasis Panel in Materials Research; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name and Committee Code:* Special Emphasis Panel in Materials Research (DMR) #1203.

*Date and Time:* February 10, 1998 8:30 a.m.-5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. LaVerne D. Hess, Program Director Division of Materials Research, Room 1065 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone (703) 306-1837.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Faculty Early Career Development (CAREER) Program.

*Reason for Closing:* The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 20, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1568 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

**NATIONAL SCIENCE FOUNDATION****Committee on Equal Opportunities in Science and Engineering; Notice of Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

*Name:* Committee on Equal Opportunities in Science and Engineering (#1173).

*Date and Time:* February 9-10, 1998; 8:30 a.m. to 5:00 p.m. and 8:45 a.m. to 5:00 p.m.

*Place:* Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Open.

**NATIONAL SCIENCE FOUNDATION****Special Emphasis Panel in Geoscience**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Geoscience.

*Date and Time:* February 3, 1998, 9:00 a.m.

*Place:* Room 730, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Richard W. West, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1579.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

*Agenda:* To review and evaluate Shipboard Scientific Support Equipment proposals as part of the selection process for awards.

*Reason for Closing:* The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

*Reason for Late Notice:* Meeting Notice was inadvertently misplaced.

**NATIONAL SCIENCE FOUNDATION****Advisory Committee for Mathematical and Physical Sciences, Committee of Visitors; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Committee for Mathematical and Physical Sciences (66).

*Date and Time:* February 2-4, 1998-8:30 a.m.-5:00 p.m.

*Place:* Rm. 375, NSF, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Bernard R. McDonald, Executive Officer for Mathematical Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1872.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

*Agenda:* To provide oversight review of the Mathematical Sciences Programs.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

*Reason for Late Notice:* Meeting Announcement was inadvertently misplaced.

Dated: January 16, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1564 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Mathematical Sciences (1204).

*Date and Time:* February 12-14, 1998.

*Place:* Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* John Strikwerda, Computational Mathematics Program, Program Officer, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1870.

*Purpose of Meeting:* To provide advice and recommendations concerning applications submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals in the mathematics of fluids as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 16, 1998.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 98-1570 Filed 1-22-98; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270, and 50-287]

### Oconee Nuclear Station, Units 1, 2, and 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located Oconee County, South Carolina.

The proposed amendments would revise Technical Specification (TS) Table 4.1-1 and Specification 4.5.2.1.2 to allow a one-time extension for specified Unit 2 refueling outage surveillances during operating cycle 16.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. A review of the previous two instrument channel tests and calibrations for

the instruments discussed in the amendment request concluded that no adverse affects should occur as a result of the one-time extension. The ICCM [Inadequate Core Cooling Monitor] should be available to perform its intended function during the requested extension period. Thus, the probability and consequences of an accident previously evaluated will not be significant[ly] increased.

In addition, a review of the previous ES channel 5 and 6 manual trip test and Reactor Building Cooling system test that are discussed in the amendment request concluded that no adverse affects should occur as a result of the one-time extension. ES channels 5 and 6 and the Reactor Building Cooling system should be available to perform their intended function during the requested extension period. Thus, the probability and consequences of an accident previously evaluated will not be significantly increased.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. Since the one-time extension should not cause any adverse effects on the ICCM, ES channels 5 and 6, or Reactor Building Spray system, a new or different kind of accident from the accidents which were previously evaluated will not occur. The ICCM, ES channels 5 and 6, and Reactor Building Cooling system, should be available to perform their intended function during the requested extension period.

3. Involve a significant reduction in a margin of safety?

No. The margin of safety will not be significantly reduced by this amendment request because the ICCM, ES channels 5 and 6, and Reactor Building Cooling system, should be available to perform their intended function during the requested extension period. In addition, the review of the previous tests and calibrations which are discussed in the amendment request concluded that no adverse affects should occur as a result of the one-time extension.

Duke has concluded based on the above information that there are no significant hazards involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would

result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 23, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 15, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 20th day of January 1998.

For the Nuclear Regulatory Commission.

**David E. LaBarge,**

*Senior Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-1752 Filed 1-22-98; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 26, 1998.

A closed meeting will be held on Thursday, January 29, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, January 29, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: January 21, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-1852 Filed 1-21-98; 3:40 pm]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39555; File No. SR-NASD-97-98]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

January 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 31, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b-4 under the Act Nasdaq is herewith filing a proposed extension of the temporary 50% fee reduction currently charged under NASD Rule 7010(1) for the execution of a transaction in SelectNet.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to extend the temporary 50% fee abatement currently charged under NASD Rule 7010(1) for the execution of a transaction in SelectNet. This proposed extension continues the current SelectNet fee reduction from \$2.50 per side to \$1.25 per side and is effective January 1, 1998, through March 31, 1998. The proposed extension constitutes only a temporary abatement in the fee Nasdaq collects and, if no further action is taken, SelectNet fees will revert to the \$2.50 per side level on April, 1998.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

The reasons justifying a SelectNet fee reduction are contained in Nasdaq's original rule filing in October of 1997 seeking a 50% abatement for the period of October 1, 1997, through December 31, 1997.<sup>2</sup> SelectNet usage has continued to grow with more than 107,000 transactions in October of 1997 and over 79,000 transactions in November of 1997. Nasdaq believes that while the level of SelectNet activity supports a continuation of lower SelectNet fees, the volatility of current SelectNet usage levels militates in favor of the maintenance of the fee reduction on a temporary basis.

Nasdaq believes that the proposed extension of the fee reduction is consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and subparagraph (e)(2) of Rule 19b-4 under the Act<sup>4</sup> because the proposal is establishing or changing a due, fee or other charge.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>2</sup> See Securities Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(e)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-98 and should be submitted by February 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-1645 Filed 1-22-98; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39548; File No. SR-Phlx-97-23]

#### Self-Regulatory Organizations: Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Treatment of PACE Orders in Double-up/Double-down Tick Situations

January 13, 1998.

#### I. Introduction

On May 2, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to double-up/double-down automatic price improvement and

manual price protection. On August 4, 1997, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change was published for comment in Securities Exchange Act Release No. 39000 (September 2, 1997), 62 FR 47865 (September 11, 1997). No comments were received on the proposal. On October 20, 1997, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.<sup>4</sup> This order approves the proposal, including Amendment No. 2 on an accelerated basis.

#### II. Description

##### A. Background

The Exchange, pursuant to Rule 19b-4 of the Act, proposes to adopt Supplementary Material .07(c) to Phlx Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System, relating to automatic double-up/double-down price improvement and manual double-up/double-down price protection. The PACE System accepts orders for automatic or manual execution in accordance with the provisions of Phlx Rule 229, which governs the operation of the PACE System and defines its objectives and parameters. Agency orders received through PACE are subject to certain minimum execution parameters and non-agency orders are subject to the provisions of Supplementary Material .02 of Rule 229. In addition, Rule 229 establishes execution parameters for orders depending on type (market or limit), size, and the guarantees offered by specialists.<sup>5</sup>

<sup>3</sup> See Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated August 1, 1997 ("Amendment No. 1").

<sup>4</sup> See Letter from Philip H. Becker, Senior Vice President, Phlx, to Michael Walinskas, Senior Special Counsel, SEC, dated October 17, 1997 ("Amendment No. 2"). Amendment No. 2 revises the proposal to provide that relief from the requirements concerning double-up/down guarantee sizes may be granted pursuant to the extraordinary circumstances language contained in the text of proposed Rule 229.07(c)(iii), rather than that of existing Rule 229.13. Moreover, the text of Rule 229.07(c)(iii) is proposed to be amended to state that extraordinary circumstances also include situations where the Exchange is unable to receive market quotations in a timely and accurate manner. In addition, while the Form 19b-4 filing containing the proposed rule change stated that member organizations may decline to participate in both double-up/down automatic price improvement and manual price protection, the text of proposed Rule 229.07(c)(i)(D) did not reflect this option. Amendment No. 2 adds such language to the text.

<sup>5</sup> Rule 229.05 provides that round-lot market orders up to 500 shares and partial round-lot ("PRL") market orders of up to 599 shares, which

##### B. Automatic Double-up/Double-down Price Improvement

The Exchange proposes to adopt Rule 229.07(c)(i), Automatic Double-up/Double-down Price Improvement, which would state that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvement to all customers and all eligible orders in a security, in any instance where the bid/ask spread of the PACE Quote<sup>6</sup> is a  $\frac{1}{4}$  point or greater, market and marketable limit orders<sup>7</sup> in NYSE-listed or Amex-listed securities for 599 shares or less that are received through PACE in double-up/double-down situations shall be provided with automatic price improvement of  $\frac{1}{8}$  of a point, beginning at 9:45 a.m.

Under the proposal, a "double-up/double-down situation" is defined as a trade that would be at least: (i)  $\frac{1}{4}$  point (up or down) from the last regular way sale on the primary market; or (ii)  $\frac{1}{4}$  point from the regular way sale that was the previous intra-day change on the primary market. The term "double" originated with two  $\frac{1}{8}$  point ticks, meaning  $\frac{1}{4}$  of a point. Under the proposal, a down tick of  $\frac{1}{16}$  of a point followed by a down tick of  $\frac{3}{16}$  of a point would be a double-down situation, because it equals  $\frac{1}{4}$  of a point.

As an example of the part (i) of the definition of a double up/double-down situation, assuming that the specialist has agreed to participate in this feature, where the PACE Quote is  $22\frac{1}{2}$ – $22\frac{3}{4}$ , if the last sales on the primary market were  $22\frac{3}{4}$  followed by a down tick at  $22\frac{5}{8}$ , a double-up/double-down situation would not occur for a market order to buy, because buying at  $22\frac{3}{4}$  is a single up tick of  $\frac{1}{8}$  of a point and,

combine a round-lot with an odd-lot, are stopped at the PACE Quote at the time of their entry into PACE ("Stop Price") for a 30 second delay to provide the Phlx specialist with the opportunity to effect price improvement when the spread between the PACE Quote exceeds  $\frac{1}{8}$  of a point. This feature is known as the Public Order Exposure System ("POES") "window." Rule 229.05 further provides that market orders for more than 599 shares that a specialist voluntarily has agreed to execute automatically also are entitled to participation in POES. If orders eligible for POES are not executed within the POES 30 second window, the order is automatically executed at the Stop Price.

<sup>6</sup> The PACE Quote consists of the best bid/offer among the American Stock Exchange ("Amex"); New York Stock Exchange ("NYSE"); Pacific Exchange; Phlx, Boston Stock Exchange, Cincinnati Stock Exchange, and Chicago Stock Exchange, as well as the Intermarket Trading System/Computer Assisted Execution System ("TTS/CAES"). See Rule 229.

<sup>7</sup> A market order is an order to buy or sell a stated amount of a security at the best price obtainable when the order is received. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than such specified price.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. § 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

thus, does not meet the  $\frac{1}{4}$  point requirement. Under the proposal, because no double-up/double-down situation occurred, no automatic price improvement would be afforded. However, applying part (ii) of the definition, a double-up/double-down situation would occur for a sell order, because a sale at  $22\frac{1}{2}$  is a  $\frac{1}{4}$  point away from the next-to-last intra-day change, executed at  $22\frac{3}{4}$ . Under the proposal, the market order to sell would be automatically executed at  $22\frac{5}{8}$ , providing an  $\frac{1}{8}$  point price improvement over the otherwise-automatic execution at  $22\frac{1}{2}$ .

Where the PACE Quote is  $22\frac{1}{4}$ – $22\frac{3}{4}$ , with the last sale at  $22\frac{1}{2}$ , part (i) of the definition would apply to a market order to buy or sell, because buying at  $22\frac{3}{4}$  creates a double-up tick ( $\frac{1}{4}$  of a point away from  $22\frac{1}{2}$ ) and selling at  $22\frac{1}{4}$  creates a double-down tick (also  $\frac{1}{4}$  of a point away from  $22\frac{1}{2}$ ).

If the last sale was at  $22\frac{3}{4}$  and the next-to-last sale was at  $22\frac{1}{2}$ , part (i) of the definition would apply to a market order to sell, because selling at  $22\frac{1}{4}$  creates a double-down tick ( $\frac{1}{2}$  of a point away from  $22\frac{3}{4}$ , and part (ii) of the definition would apply to a buy order, because buying at  $22\frac{3}{4}$ , although not an up or down tick from the last sale of  $22\frac{3}{4}$ , is  $\frac{1}{4}$  of a point away from the next to last change, executed at  $22\frac{1}{2}$ .

If the last sale was at  $22\frac{5}{8}$  and the next-to-last sale was at  $22\frac{1}{2}$ , part (ii) of the definition would apply to a market order to buy, because buying at  $22\frac{3}{4}$  creates a double-up tick ( $\frac{1}{4}$  of a point away) from  $22\frac{1}{2}$ , as well as to a market order to sell, because selling at  $22\frac{1}{4}$  creates a double-down tick ( $\frac{1}{4}$  of a point away) from  $22\frac{1}{2}$ .

Pursuant to part (ii) of the definition of a double-up/double-down situation, this term includes qualifying changes from the last change, not just the two previous last sales. For example, where the last sales on the primary market were:  $22\frac{1}{2}$ ;  $22\frac{3}{8}$ ; and  $22\frac{3}{8}$ , with the PACE Quote at  $22\frac{1}{4}$ – $22\frac{1}{2}$ , a market order to sell that would otherwise be executable at  $22\frac{1}{4}$  should be price-improved to  $22\frac{3}{8}$ , because it is a double-down tick ( $\frac{1}{4}$  of a point away) from the last "change" or sale that was the previous change (meaning the change from  $22\frac{1}{2}$  to  $22\frac{3}{8}$ ).<sup>8</sup> Under part (i) of the definition, this order would not qualify as a double-up/double-down situation, because an execution at  $22\frac{1}{4}$

would be only  $\frac{1}{8}$  of a point away from the last sale of  $22\frac{3}{8}$ .

To explain the interaction between the POES window and the automatic double-up/double-down price improvement feature, assuming that the PACE Quote is  $15\frac{1}{2}$ – $3\frac{3}{4}$  and the last sale was at  $15\frac{1}{2}$ , an order to buy 500 shares would be subject to automatic price improvement, because buying at  $15\frac{3}{4}$  creates a double up tick ( $\frac{1}{4}$  of a point away) from the last sale at  $15\frac{1}{2}$ . The order would be automatically executed under the proposal at  $15\frac{5}{8}$  (giving  $\frac{1}{8}$  of a point price improvement over the PACE Quote of  $15\frac{3}{4}$ ) and no POES window would occur. The proposed automatic double-up/double-down price improvement feature results in an automatic execution, with no window, timer or delay. If, on the other hand, the order was to sell 500 shares, a double-up/double-down situation would not occur, because selling at  $15\frac{1}{2}$  is not a double-up/double-down situation (not  $\frac{1}{4}$  of a point away from the last sale); this order would be POES-eligible such that the POES window would apply. At the expiration of the POES window, absent manual specialist intervention, this order would be manually executed at  $15\frac{1}{2}$ , its Stop Price.

Automatic double-up/double-down price improvement also would be available for marketable limit orders. As an example, assuming that the specialist has agreed to participate in this feature, where the PACE Quote is  $15\frac{1}{2}$ – $15\frac{3}{4}$ , and the last sale was at  $15\frac{1}{2}$ , an order to buy 500 shares at  $15\frac{3}{4}$  would be subject to automatic price improvement, because buying at  $15\frac{3}{4}$  creates a double up tick ( $\frac{1}{4}$  of a point away) from the last sale at  $15\frac{1}{2}$ . The order to buy 500 shares at  $15\frac{3}{4}$  is a marketable limit order, because it is immediately executable on the offer. Under this proposal, this order would be automatically executed at  $15\frac{5}{8}$ , receiving price improvement of  $\frac{1}{8}$  of a point.

The Exchange notes that the execution resulting from the automatic price improvement feature can create a double-up/double-down situation; for instance, where the PACE Quote is  $32$ – $32\frac{1}{4}$  and the last sale was at  $32\frac{3}{8}$ , a sell order that would be executable at  $32$  would be improved to  $32\frac{1}{8}$ , which is a double-down tick ( $\frac{1}{4}$  point from  $32\frac{3}{8}$  to  $32\frac{1}{8}$ ).

Automatic double-up/double-down price improvement will not occur where the execution price would be outside the primary market high/low range for the day, if out-of-range protection was elected by the member organization entering the order pursuant to Rule 229.07(a). The following example illustrates how the execution price

before automatic price improvement can be out-of-range. Where the primary market high and low for the day are  $22\frac{1}{2}$  and  $22\frac{1}{4}$ , the last sale was at  $22\frac{3}{8}$  and the PACE Quote is  $22\frac{5}{8}$ – $22\frac{7}{8}$ , an incoming market order to sell would revert to manual status since an execution at  $22\frac{5}{8}$  (or  $22\frac{3}{4}$ , if automatic price improvement would have been applied) would constitute an out-of-range execution (*i.e.*, an execution at  $22\frac{5}{8}$  would have been at a price about the  $22\frac{1}{2}$  high for the day). The next example illustrates how the execution price could be out-of-range as a result of automatic price improvement. Where the primary market high and low for the day are  $22\frac{5}{8}$  and  $22\frac{1}{4}$ , the last sale was at  $22\frac{3}{8}$  and the PACE Quote is  $22\frac{5}{8}$ – $22\frac{7}{8}$ , an incoming sell order executable at  $22\frac{5}{8}$  would *not* be improved to  $22\frac{3}{4}$ , because such price would be out-of-range (*i.e.*, an execution at  $22\frac{3}{4}$  would have been at a price above the  $22\frac{5}{8}$  high for the day). Instead, the order would revert to manual status, and the specialist would either stop the order or execute it at  $22\frac{5}{8}$ . Absent out-of-range protection, the  $22\frac{5}{8}$  execution would have been a double-up situation ( $\frac{1}{4}$  of a point away from the last sale of  $22\frac{3}{8}$ ).

The Exchange represented that it is proposing to extend its price improvement initiative to double-up/double-down situations, because these are particularly suitable for price improvement. Instead of affording an automatic execution at the PACE Quote, the proposal results in an automatic execution that improves on that price by an  $\frac{1}{8}$  of a point.

The Exchange has determined that, as with many PACE features and participation in the PACE System itself, automatic double-up/double-down price improvement should be made available on a voluntary, symbol-by-symbol basis, so that specialists can determine which securities are suitable for the program. Moreover, the Exchange has asserted that the availability of a price improvement feature benefits the specialist function, especially in high-volume securities, where stopping orders and effecting manual intervention are time-consuming, can delay execution, and do not necessarily result in price improvement.

### C. Manual Double-up/Double-down Price Protection

The Exchange also proposes to adopt a manual double up/double-down price protection provision as Rule 229.07(c)(ii). Currently, a form of manual double-up/double-down price protection is a feature of the PACE System, but is neither mandatory, nor

<sup>8</sup> The first down tick was from  $32\frac{1}{2}$  to  $32\frac{3}{8}$ , and the second down tick would have been from  $32\frac{3}{8}$  to  $32\frac{1}{4}$  had the order been executed. The intervening sale at  $32\frac{3}{8}$  does not change this result.

available in all securities.<sup>9</sup> Nor has it been incorporated into Exchange rules. Thus, the Exchange is proposing to replace the existing voluntary feature with the proposed mandatory feature. This aspect of the proposal is intended to impose a double-up/double-down price protection requirement upon specialists that choose not to participate in the automatic price improvement feature. Manual price protection would apply in  $\frac{1}{8}$  point-wide markets or greater in double-up/double-down situations; thus, unlike automatic price improvement, which is triggered only by  $\frac{1}{4}$  point-wide or greater markets, a  $\frac{3}{16}$  point-wide market would trigger manual price protection. Further, the Exchange has represented that in situations where both manual double-up/double-down price protection and POES would otherwise apply, an order will receive manual price protection, but will not be eligible for POES.<sup>10</sup>

The proposed manual double-up/double-down price protection provision would stop eligible orders (*i.e.*, automatically executable market and marketable limit orders of 599 shares or less in NYSE- or Amex-listed securities received through PACE in double-up/double down situations, beginning at 9:45 a.m.) to give such orders the possibility of receiving manual price improvement from the specialist. Under this proposal, an eligible order would be "stopped" by the specialist at the PACE Quote at the time of its entry into PACE, meaning that the order is guaranteed to receive at least the price by the end of the trading day. Consistent with Phlx Equity Floor Procedure Advice A-2 ("Advice A-2") specialists are required to display stopped orders at an improved price and any contra-side orders received by the specialist will be taken into account for purposes of determining when to execute a stopped order and at what price.

The Exchange has represented that the purpose of a manual price protection provision is to provide an alternative double-up/double-down feature, which allows for price improvement, albeit not automatic, for

securities which the specialist has determined are not appropriate for the automatic feature, due to, for example, liquidity, trading patterns, and volatility. In this regard, the Exchange has stated that less liquid stocks may trade in sizes that render it unfair to specialists to afford automatic price improvement to such orders and manage the resulting positions.<sup>11</sup>

#### *D. Both Features*

For both automatic price improvement and manual price protection, specialists may establish higher sizes than the 599 share minimum (but less than or equal to the specialist's automatic execution guarantee), which may be changed effective the next day. Member organizations entering PACE orders ("PACE Users") will be notified of any such changes.

Specialists choosing to activate the automatic feature would also be subject to the procedure described above (*i.e.*, it would become effective the next day). In addition, switching between the automatic and manual features triggers this procedure. Signing up for the manual price protection feature is not required, because all specialists will be required to participate.

PACE Users entering orders may decline to participate in the automatic and manual double-up/double-down features; however, they may not choose to participate in only one of the two features. Moreover, odd-lot orders are not eligible for either proposed feature. Further, the proposed features are available only for orders that are eligible for automatic execution. For instance, non-marketable limit orders and orders exceeding a specialist's automatic execution guarantee size are not eligible for either proposed feature, because the features depend upon either stopping or automatically improving orders guaranteed a certain automatic execution price.

Finally, the proposed rule change provides that both proposed features may be disengaged in a security or floor-wide in extraordinary circumstances. In addition to fast market conditions, extraordinary circumstances also include systems malfunctions and other circumstances that limit the Exchange's

ability to receive, disseminate, or update market quotations in a timely and accurate manner.

### **III. Discussion**

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>12</sup> In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>13</sup>

Over the years, the Commission has recognized that the increased competition for order flow that results from permitting regional specialists to attract orders from other markets by providing price improvement opportunities and superior quotations enhances market making ability and the quality of customer order execution. The Commission has approved proposals by national securities exchanges to integrate price improvement opportunities, on both an automatic and manual basis, into their automatic execution systems. Accordingly, the Commission believes that the Exchange's present proposal, which would adopt both automatic price improvement and manual price protection features in double-up/double-down situations, may enhance both intermarket competition and order execution quality on the Exchange. In addition, the Commission believes that both features should contribute to the maintenance of orderly markets by Phlx specialists because they help to reduce the price variations occurring from trade to trade on low volume.

#### *A. Automatic Double-up/Double-down Price Improvement*

Under the proposal, specialists voluntarily may agree to provide automatic price improvement of  $\frac{1}{8}$  of a point from the PACE Quote to all customers and all market and marketable limit orders of up to 599 (or higher, if elected by the specialist)

<sup>9</sup> The Exchange has represented that the current double-up/down price protection feature has been in use since 1991. If elected by the entering member organization in a security selected by the specialist as eligible for this feature, orders within the specialist's automatic execution guarantee size are stopped in double-up/down situations.

<sup>10</sup> Telephone conversation between Philip Becker, Senior Vice President and Chief Regulatory Officer, Phlx, and Jon Kroeper, Special Counsel, Division of Market Regulation, SEC, dated November 7, 1997. The Phlx proposal also states that the POES window is not applicable where the automatic double up/down price improvement feature is applicable.

<sup>11</sup> Specifically, the Exchange has stated that its reference to trading patterns may cover stocks where the spread between the bid and offer is very narrow, with little trading occurring between such bid/offer spread, or very wide, with most trading on the bid/offer. Moreover, the Exchange has stated its belief that low volatility stocks may not be appropriate for automatic price improvement, because little movement in the stock may also indicate that little trading is occurring between the bid and offer price.

<sup>12</sup> 15 U.S.C. § 78f(b).

<sup>13</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

shares in a particular security on a stock-by-stock basis, in any instance where the bid/ask spread of the PACE Quote is  $\frac{1}{4}$  point or greater and an automatic execution at the PACE Quote would create a double-up/double-down situation from the last primary market sale. The Commission believes that the adoption of this proposed feature by the Exchange is appropriate in that its use by Phlx specialists should increase the likelihood that eligible customer orders, particularly marketable limit orders, will be executed at an improved price over the PACE Quote. As stated above, certain market orders already are stopped in the POES window for 30 seconds to give the specialist the opportunity to provide price improvement to such orders.<sup>14</sup> The Commission's Division of Market Regulation previously has noted that price improvement windows, such as POES, by themselves rarely provide an execution that betters the quoted market.<sup>15</sup> The Exchange's proposal should enhance the price improvement opportunities available for such orders as it will provide automatic price improvement to eligible orders in double-up/double-down situations.

The Commission's recent Report on the Practice of Preferencing found that the frequency of price improvement for marketable limit orders was significantly lower than that for market orders when measured across exchanges, spreads, and order size ranges.<sup>16</sup> As marketable limit orders currently are not eligible for the POES window, the Commission finds that the proposed automatic price improvement feature should have a beneficial impact, in that it should increase significantly the price improvement opportunities available to marketable limit orders, as such orders otherwise would be executed automatically at the PACE Quote upon their entry into PACE.

#### **B. Manual Double-up/Double-down Price Protection**

The Exchange also has proposed to adopt a mandatory manual double-up/double-down price protection feature.<sup>17</sup>

In situations where a specialist has not agreed to provide automatic double-up/double-down price improvement, this feature would stop all market and marketable limit orders of up to 599 shares (or higher, if elected by the specialist) to all customers in all stocks in instances where the bid/ask spread of the PACE Quote is  $\frac{1}{8}$  or greater in double-up/double-down situations, making it possible for the specialist to provide price improvement to such orders.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duties to unexecuted limit orders on the specialist's limit order book.<sup>18</sup> The Commission, however, has approved the practice in instances where the harm to existing orders on the specialist's limit order book was believed to be offset by the resulting reduced spread and possibility of price improvement for the stopped order. The Commission believes that the instances in which the Exchange's proposal is intended to apply are appropriate for the use of stopping stock procedures.

Further, the Commission notes that the proposal and existing Phlx procedures provide for the display of stopped orders by Phlx specialists. Specifically, Advice A-2, which governs the handling of stopped orders on the Phlx equity floor, requires a Phlx specialist who stops an order pursuant to the feature to display such an order

shall take effect unless approved by the Commission or otherwise permitted in accordance with its provisions.

<sup>18</sup> See SEC, Report of Special Study of Securities Markets, 88th Cong., 1st Sess., H.R. Doc. No. 95, pt. 2, at 150-154; Preferencing Report, *supra* note 16, at Part II.B.4. For example, in a market quoted 20-20 $\frac{1}{8}$  (with a minimum variation of  $\frac{1}{16}$  of a point), 1000 shares bid and offered, the offer representing a customer limit order, the specialist receives a market order to buy 500 shares. If the specialist decides to stop the market order, the specialist will change his or her quote to 20 $\frac{1}{16}$ -20 $\frac{1}{8}$ , 500 shares bid and 1000 shares offered, the bid representing the stopped market order. If the specialist subsequently receives a market order to sell 500 shares, the specialist will execute the sell order against the stopped order at 20 $\frac{1}{16}$ , improving the price for the stopped order. However, the sell limit order at 20 $\frac{1}{8}$  with priority on the book is bypassed and does not receive the execution it would have had if the stop had not been granted. In addition, if the market turns away from the limit price (*i.e.*, moves to 20-20 $\frac{1}{16}$  or lower), the limit order may never be executed.

The Commission notes, however, that because manual double-up/double-down price protection only is available in  $\frac{1}{8}$  point markets and greater, and the minimum trading variation on the Phlx currently is  $\frac{1}{16}$ , the proposal does not implicate the Commission's particular and continuing concerns with the practice of stopping stock in minimum variation markets that were set forth in the Preferencing Report. See Preferencing Report, *supra* note 16, at Part II.B.4.

in his or her quote at an improved price.<sup>19</sup>

Moreover, as was stated above in connection with double-up/double-down price improvement, the proposed manual double-up/double-down price protection feature gives the specialist the opportunity to provide price improvement to orders that would otherwise be subject to immediate automatic execution at the PACE Quote. Additionally, a specialist voluntarily may extend automatic price improvement or manual price protection in double-up/double-down situations to orders for more than 599 shares, provided the level is at or below the specialist's automatic execution guarantee. This aspect of the proposal should have a beneficial impact as it appears to be specifically targeted to provide the possibility of price improvement by the specialist to orders currently lacking such opportunities.

The Commission also believes that the proposal, taken together with Advice A-2, the proposal provides adequate guidelines for a specialist's handling of orders that are stopped in double-up/double-down situations in a manner consistent with his or her obligation to maintain fair and orderly markets.<sup>20</sup> In particular, proposed Rule 229.07(c)(ii) provides that orders that are stopped for manual double-up/double-down price protection are guaranteed to receive at least the Stop Price by the end of the trading day. While the specialist's provision of this guarantee is implicit in the concept of stopping stock, it is not stated explicitly in Advice A-2.<sup>21</sup>

<sup>19</sup> The Commission notes that the Exchange has represented that in situations where both manual double-up/double-down price protection and POES would otherwise apply, an order will receive manual price protection, but will not be eligible for POES. See *supra* note 9. The Commission believes that this aspect of the proposal should increase order exposure on the Exchange, as orders stopped for manual price protection will be required to be displayed in the specialist's quote, whereas orders eligible for POES are displayed only to the specialist. See *supra* note 5.

<sup>20</sup> See Phlx Rule 203.

<sup>21</sup> In approving the Phlx's adoption of Advice A-2 in 1994, the Commission stated its belief that "further action could be taken [by the Exchange] to ensure proper handling of stopped stock." See Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994) (File No. SR-Phlx-93-41). Specifically, the Commission stated that it expected the Phlx to submit a proposed rule change to complement its floor procedure advice. The Commission set forth a number of elements that the Exchange should consider including in such a rule, namely: a definition of the agreement to "stop" stock and the obligations of the member who agrees to grant the stop; the market conditions under which a stop should be granted; a policy for the execution of stopped stock and, in particular, for determining the price at which the order should be executed; and pilot procedures for minimum variation

Continued

<sup>14</sup> See *supra* note 5.

<sup>15</sup> See, Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments* (January 1994), at Study V, n.19.

<sup>16</sup> See SEC, *Report on the Practice of Preferencing* (April 11, 1997) at Tables V-8A to V-8C.

<sup>17</sup> As stated above, the Exchange has represented that its existing manual double-up/double-down price improvement feature has been in use since 1991. See *supra* note 9 and accompanying text.

The Commission notes that Section 19(b) of the Act provides that each self-regulatory organization is required to file any proposed rule change with the Commission and that no proposed rule change

### C. Provisions Common to Both Proposed Features

Under Rule 229.07(a), PACE Users may elect that if an automatic execution of their orders at the PACE Quote would result in an execution price that is outside the primary market high-low range for that trading day, such orders would be routed to the specialist for manual execution at or within the high-low range of the day. The proposal provides that PACE Users may elect that neither automatic double-up/double-down price improvement nor manual double-up/double-down price protection will occur where the execution price (before or after the application of automatic price improvement) or Stop Price, respectively, would be outside the high-low range for the day. In such instances, orders would be handled manually by the specialist and be subject to an execution at or within the primary market high-low range of the day. The Commission believes that this aspect of the proposal is appropriate in that it provides PACE Users with greater flexibility as to the disposition of their orders. Moreover, providing such flexibility could enhance the Exchange's competitive position among firms seeking an appropriate venue for the execution of their order flow.

In addition, under proposed Rule 229.07(c)(i)(D), PACE Users may decline to participate in the automatic and manual double-up/double-down features; however, they may not choose to participate in only one of the two features.<sup>22</sup> The Commission believes that such a provision is appropriate in that it should offer a preferred alternative to PACE Users for whom a prompt execution at a definitive price is most important. As described above, when the manual double up/double down price protection feature is applicable, a significant time delay may occur when an order is stopped and price improvement is attempted. In addition, as with offering PACE Users the alternative between double-up/double-down features and out-of-range services, offering PACE Users the option to decline both features may enhance its competitive position among order

execution venues. The Commission further believes that the Exchange's decision to require that PACE Users only may decline to participate in both features, not a particular one, is a decision that appropriately falls within the business judgment of the Exchange.

Further, proposed Rule 229.07(c)(i) and (c)(ii) set forth procedures through which specialists may activate automatic double-up/double-down price improvement in a particular stock, switch between the automatic and manual features, and change the size of the orders that will be eligible for either feature. In each instance, the change will be effective the next trading day, and PACE Users will be notified of any such changes. The Commission believes the proposal provides satisfactory procedures in this regard. In particular, the Commission believes that making these changes effective on the next trading day is appropriate in that it grants specialists the necessary flexibility to manage the proposed features in light of changing market conditions. At the same time, it alleviates concerns that specialists potentially may take advantage of their unique knowledge with respect to incoming PACE order flow to make intra-day modifications to the double-up/double-down features that would be to the detriment of other market participants.

Finally, proposed PACE Rule 229.07(c)(iii) provides that both double-up/double-down features may be disengaged in one or more securities, upon the presence of extraordinary circumstances, as determined by two Phlx Floor Officials. Extraordinary circumstances are defined to include fast market conditions, systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate, or update market quotations in a timely manner. The Commission believes that this aspect of the proposal is appropriate in that it provides sufficient guidance to the Phlx membership by clearly delineating the circumstances under which the double-up/double down features may be disengaged and the procedure to be followed in seeking such disengagement. The Commission further believes that the provision requiring two Floor Officials to approve the disengagement of both double-up/double-down features is important. Specifically, while the particular categories of events covered in the proposed paragraph generally are appropriate grounds for the disengagement of the double-up/double-down features, the Commission believes that requiring Floor Officials to confirm

that such conditions exists is a necessary safeguard to ensure the appropriate treatment of PACE orders eligible for these features.<sup>23</sup>

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 revises the proposals to provide that relief from the requirements concerning double-up/double-down guarantee sizes may be granted pursuant to the extraordinary circumstances language contained in the text of proposed Rule 229.07(c)(iii) to the PACE Rule, rather than that of existing PACE Rule 229.13. The Commission believes that amending the proposal to utilize Rule 229.07(c)(iii) for this purpose is a reasonable approach, as this provision has been formulated specifically for use in double-up/double-down situations, whereas Rule 229.13 was developed to apply in the context of specialist performance obligations. In addition, Amendment No. 2 revises the text of proposed Rule 229.07(c)(iii) to state that extraordinary circumstances also include situations where the Exchange is unable to receive market quotations in a timely and accurate manner, as well as where it is unable to disseminate or update such quotations. The Commission finds that the addition of this provision is appropriate in that such instances may interfere with the ability of PACE to determine whether a double-up/double-down situation actually has occurred, and the ability of specialists to handle orders stopped pursuant to the manual feature. Further, Amendment No. 2 adds language to the text of proposed Rule 229.07(c)(i)(D) to state specifically that member organizations may decline to participate in both double-up/double-down features. While this alternative was set forth in the Form 19b-4 filing containing the proposed rule change, it was not reflected in the text of proposed Rule 229.07(c)(i)(D). The Commission finds that this aspect of the change is appropriate in that it will serve as a reminder to member organizations of the availability of this alternative. Finally, the Commission notes that the proposed rule change was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it. Therefore, the Commission believes that it is

markets that are consistent with the rules of priority, parity, and precedence. The Commission continues to believe strongly that the Exchange should submit a proposed rule change pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder to adopt such a stopping stock rule.

<sup>22</sup> A firm's election to not participate in the double up/double down features will apply to trading in all Phlx stocks; the firm will not be able to make separate elections on a security by security basis. Phone conversation between Michael Walinskis, SEC and Edith Hallahan, Phlx, January 13, 1998.

<sup>23</sup> In addition, the Commission expects the Exchange to monitor the performance of Floor Officials in granting any requests by specialists to disengage the double-up/double-down features.

consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-97-23 and should be submitted by February 13, 1998.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-Phlx-97-23), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98-1551 Filed 1-22-98; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39549; File No. SR-Phlx-96-38]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options

January 14, 1998.

#### I. Introduction

On August 21, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to provide for the listing and trading of Flexible Exchange Options ("FLEX options") on specified indexes ("FLEX index options") and equity securities ("FLEX equity options").

Notice of the proposal was published for comment and appeared in the **Federal Register** on September 24, 1996.<sup>3</sup> The Phlx submitted to the Commission Amendment No. 1 to its proposal on March 6, 1997.<sup>4</sup> Notice of Amendment No. 1 was published for comment and appeared in the **Federal Register** on April 24, 1997.<sup>5</sup> The Phlx submitted to the Commission Amendment No. 2 to its proposal on July 1, 1997.<sup>6</sup> The Phlx submitted Amendment No. 3, on August 27, 1997,<sup>7</sup> which was subsequently replaced in its

entirety by Amendment No. 4, which the Phlx submitted to the Commission on November 7, 1997.<sup>8</sup>

The Phlx submitted Amendment No. 5 to the Commission on January 6, 1998.<sup>9</sup>

No comment letters were received on the proposed rule change or on Amendment No. 1 to the proposed rule change. This order approves the Exchange's proposal, as amended by Amendment Nos. 1 through 5.

#### II. Background

The purpose of the Exchange's proposal is to provide a framework for the Exchange to list and trade equity and index options that give investors the ability, within specified limits, to designate certain of the terms of the options. In recent years, an over-the-counter ("OTC") market in customized options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions through a relatively small number of securities dealers. To compete with this growing OTC market in customized options, the Exchange

<sup>8</sup> The Phlx replaces Amendment No. 3, in its entirety, with Amendment No. 4, and proposes to: (1) eliminate the application of position and exercise limits to FLEX equity options; (2) reduce the minimum size applicable to a Request-for-Quote for a closing transaction in already-opened FLEX equity options from 100 to 25 contracts; (3) clarify the parity and priority principles for FLEX options transactions; (4) amend the proposed rule change to refer consistently to "FLEX index and equity options" (as opposed to index FLEX options); (5) correct the text of proposed Rule 1079(b)(6) regarding the crossing procedure to reflect that the crossing intention has already been announced as part of the RFQ, as amended by Amendment No. 2; and (6) amend proposed Rule 1079(a)(1) to clearly state that any options-eligible security pursuant to Rule 1009 is eligible to underlie FLEX equity options trading and any index underlying Non-FLEX options trading is also eligible for FLEX index options trading. These proposed changes are described more fully herein. See Letter from Philip H. Becker, Senior Vice President, General Counsel and Chief Regulatory Officer, Phlx, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated November 3, 1997.

<sup>9</sup> The Phlx proposes in Amendment No. 5 to replace section 3 of Amendment No. 4 and withdraw the examples provided in Amendment 4. In Amendment No. 5, the Phlx clarifies: (1) the parity and priority principles for FLEX options transactions; and (2) that each assigned ROT or assigned Specialist is not required to respond with a quote in every instance, unless requested by a Floor Official. See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated December 9, 1997 ("Amendment No. 5").

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 37691 (September 17, 1996), 61 FR 50060.

<sup>4</sup> In Amendment No. 1 to its proposed rule change, the Phlx restated the original proposal and proposed several changes as set forth in detail in Section III of this release.

<sup>5</sup> See Securities Exchange Act Release No. 38519 (April 17, 1997), 62 FR 20048.

<sup>6</sup> In Amendment No. 2, the Exchange amended the Request for Quote process to require a Requesting Member to indicate the size of an order and the intention to cross, if applicable. In addition, the Phlx proposes specific position limits of 22,000 contracts for Super Cap Index options. See Letter from Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated June 25, 1997 ("Amendment No. 2").

<sup>7</sup> See Letter from Theresa McCloskey, Vice President, Phlx, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated August 26, 1997 ("Amendment No. 3").

<sup>24</sup> 15 U.S.C. § 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

proposes to adopt rules<sup>10</sup> to permit the introduction of trading in FLEX options in an exchange auction market environment, with The Options Clearing Corporation ("OCC") as issuer and guarantor.<sup>11</sup> Thus, FLEX options are structured with a minimum size reflecting the larger-sized trades of these institutional users. The Exchange's proposal will allow FLEX option market participants to designate the following contract terms: (1) exercise price (except for certain limitations for FLEX equity call options);<sup>12</sup> (2) exercise style (*i.e.*, American<sup>13</sup> or European,<sup>14</sup>); (3) expiration date;<sup>15</sup> (4) option type (put, call, or hedge order); and (5) form of settlement (for index options—A.M., P.M. or average).

The proposed rule, Rule 1079, is based upon the Exchange's Rule 1069, Customized Foreign Currency Options, and Exchange experience with trading this product since November, 1994.<sup>16</sup> Generally, FLEX options shall be traded in accordance with many existing option and index option rules; however, Rule 1079 contains certain new trading procedures unique to FLEX options. In addition, the Exchange believes that the proposal is similar to the rules and proposals of other exchanges respecting flexible options.<sup>17</sup>

OCC will be the issuer and guarantor of all FLEX index and equity options. Similarly, the Commission has

previously, designated FLEX index and equity options as standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act.<sup>18</sup>

### III. Description of the Proposal<sup>19</sup>

The Phlx proposes to adopt Rule 1079, FLEX<sup>TM</sup> index and equity<sup>20</sup> options, which would govern the trading of FLEX index and equity options on the Exchange. The Exchange proposes to designate all Phlx index options as eligible for FLEX options trading.<sup>21</sup> Thus, the Phlx is proposing to trade FLEX options on industry (narrow-based) index options pursuant to the proposed rule, in addition to market (broad-based) index options. Further, the Phlx is proposing to trade FLEX equity options on securities which are options-eligible pursuant to Rule 1009.

Proposed Rule 1079 contains the characteristics, trading procedure and other provisions applicable to trading FLEX options. All FLEX options must be quoted and traded in the trading crowd of the corresponding non-FLEX option. The Exchange notes that the Automated Options Market ("AUTOM") system will not be available for FLEX options. Proposed Rule 1079 also states that although FLEX options are generally subject to the rules in the

options section,<sup>22</sup> to the extent that the provisions of Rule 1079 are inconsistent with other applicable Exchange rules, Rule 1079 takes precedence with respect to FLEX options.

Because FLEX options would not be continuously quoted, nor are series pre-established, the variable terms of FLEX options shall be established by the following process. In order to initiate a transaction, a Requesting Member must submit an RFQ to the appropriate trading crowd, announcing the terms of the quote sought. The characteristics, including which terms and to what degree customization will be available, are outlined in Rule 1079(a).<sup>23</sup> For example, the exercise strike price respecting FLEX index options can be specified at the time the quote is requested in terms of a specific index value number (*e.g.*, 553.5), a method for fixing such number (*e.g.*, 10 basis points over the index value at a certain time, or with the future trading at a certain price), or a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date (*e.g.*, 5% above the close).<sup>24</sup> Similarly, respecting FLEX equity options, the exercise strike price can be specified in terms of a specific dollar amount rounded to the nearest one-eighth of a dollar, or a percentage of the underlying security rounded to the nearest tick. However, the Exchange proposes to amend its original proposal to state that customization of FLEX equity option strike prices for calls will not be permitted; only strikes that may be listed pursuant to Rule 1012 are eligible, such that the strike price must be consistent with strike price intervals permissible for standardized non-FLEX equity options.<sup>25</sup>

The exercise style can be either American or European,<sup>26</sup> regardless of the exercise style of the listed option.<sup>27</sup> The expiration date can also be customized, specifying any business day (non-holiday)—any month, day and year within five years for FLEX index options and three years for FLEX equity options.

<sup>10</sup> See Phlx Rule 1079.

<sup>11</sup> For a discussion of clearance and settlement procedure for FLEX options, see Securities Exchange Act Release No. 37318 (June 18, 1996) (SR-OCC-96-03). For example, OCC may depart from regular expiration date procedures and deadlines in the case of equity FLEX options, pursuant to OCC Rule 805, Interpretation and Policy .03.

<sup>12</sup> The Exchange believes that the flexible exercise price feature could result in an available call option that would not be eligible to be a qualified covered call ("QCC") under Section 1092(c)(4) of the Internal Revenue Code, thus jeopardizing a modest tax benefit currently enjoyed by writers of standardized non-FLEX equity call options. Accordingly, the Phlx's rules will restrict exercise prices for FLEX equity call options. See also Securities Exchange Act Release No. 37726 (September 25, 1996) (File No. SR-Amex-96-29; SR-CBOE-96-56; and SR-PSE-96-31).

<sup>13</sup> An American-style equity option is one that may be exercised at any time on or before the expiration date.

<sup>14</sup> A European-style equity option is one that may be exercised only during a limited period of time prior to expiration of the option.

<sup>15</sup> The proposal, however, requires that the expiration date of a FLEX equity option may not fall on a day that is on, or within two business days of the expiration date of a Non-FLEX equity option. In addition, FLEX index options must have an expiration date within 5 years of issuance, and FLEX equity options within 3 years of issuance.

<sup>16</sup> Securities Exchange Act Release No. 34925 (November 1, 1994) (SR-Phlx-94-18).

<sup>17</sup> See, *e.g.*, CBOE Rules 24A.1-24A.17; Amex Rules 900G, et. seq.; and PSE Rules 8.100-8.115.

<sup>18</sup> FLEX index options and FLEX equity options have been deemed "standardized options" for purposes of the Rule 9b-1 options disclosure framework. See *e.g.*, Securities Exchange Act Release Nos. 31920 (February 24, 1993) (Order approving FLEX options based on the S&P 100 and 500 Indexes); 31910 (February 23, 1993) (FLEX index option 9b-1 order); and 36841 (February 14, 1996) (Order approving FLEX equity options for CBOE and PCX, and designating FLEX equity options, and FLEX index options traded and settled in certain designated foreign currencies, as "standardized options"). See also Securities Exchange Act Release No. 37824 (October 15, 1996) (FLEX equity option 9b-1 order).

<sup>19</sup> The original proposal was published for comment in Securities Exchange Act Release No. 37691 (September 17, 1996) (File No. SR-Phlx-96-38).

<sup>20</sup> The term "FLEX" is a trademark of the Chicago Board Options Exchange, Inc. ("CBOE").

<sup>21</sup> The following are the current Phlx market index options: Value Line Composite Index ("VLE"), National Over-the-Counter Index ("XOC"), and U.S. Top 100 Index ("TPX"). The following are the current Phlx industry index options: OTC Industrial Average Index ("OTZ"), Bank Index ("BKX"), Gold/Silver Index ("XAU"), Semiconductor Index ("SOX") and Utility Index ("UTY"), Forest and Paper ("FPP"), Plane ("PLN"), Phone ("PNX"), and Oil Service ("OSX"). Because the Super Cap Index ("HFX") is neither a market or an industry index, the Exchange applies a position limit of 5,500 contracts for the non-FLEX overlying option. This position limit is lower than the position limit tiers for standardized non-FLEX industry index options. In addition, the Exchange proposes to delete the provision that requires approval by the Options Committee prior to listing an otherwise eligible FLEX product. See Amendment No. 4, *supra* note 8.

<sup>22</sup> See Phlx Rules 1000, et. seq.

<sup>23</sup> The Exchange represents that Rule 1079 generally parallels the provisions of Rule 1069 governing customized foreign currency options.

<sup>24</sup> Initially, the exercise strike price will not be available for customization as a percentage, pending systems enhancements.

<sup>25</sup> See Rule 1012, Commentary .05.

<sup>26</sup> An American style option may be exercised at any time up to its expiration, while a European style option can only be exercised on its expiration day. See Phlx Rule 1000(b)(35).

<sup>27</sup> In certain circumstances, European style FLEX equity options may be adjusted to require the delivery upon exercise of a fixed amount of cash. See OCC By-Law, Article VI, Section 11, Interpretation and Policy. 08.

However, FLEX options may not expire on any day that falls on or within two business days of (prior or subsequent to) a mid-month expiration day for a non-FLEX option on the same underlying index or security (other than a quarterly expiring index option).<sup>28</sup> In addition, a FLEX option cannot expire on the same day that series is established at OCC.<sup>29</sup>

With respect to the minimum size of FLEX *market index* option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is \$10 million underlying equivalent value; if there is open interest, the minimum value size of an RFQ for an opening or closing transaction is \$1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less. The underlying equivalent value is defined as the aggregate underlying value of a FLEX index option (index multiplier times the current index value) multiplied by the number of FLEX index options. The minimum value size for a responsive quote in FLEX market index options is \$1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less.

With respect to the minimum size of FLEX *industry* index option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is \$5 million underlying equivalent value; this amount is one-half of the minimum size proposed by the Phlx and currently in place on other options exchanges for flexible broad-based index options. Where there is open interest, the minimum value size of an RFQ for an opening or closing transaction is \$1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less. The minimum value size for a responsive quote is \$1 million underlying equivalent value, or the remaining underlying equivalent value on a closing transaction, whichever is less.

With respect to the minimum size of FLEX *equity* option quotes, if there is no open interest in the particular series when an RFQ is submitted, the minimum value size of an RFQ is 250 contracts; if there is open interest, the

minimum value size of an RFQ is 100 contracts in the case of an opening transaction; and 25 contracts, or the remaining size on a closing transaction, whichever is less. The minimum value size for a responsive quote in FLEX equity options is 25 contracts, or the remaining size on a closing transaction, whichever is less.<sup>30</sup> The Phlx also proposes that the minimum size for FLEX equity options exercises is reduced from the originally proposed 100 contracts to 25 contracts.

The Exchange proposes to lower the minimum size from 100 to 25 contracts under such circumstances, in part, to conform to the rules of other options exchanges.<sup>31</sup> Further, the Exchange believes that the ability to close positions in increments smaller than 100 contracts should attract additional FLEX trading interest. The Exchange notes that market participants wanting to execute an opening transaction in a particular series of FLEX equity options will continue to be required to meet the 250 or 100 minimum contract requirement.

Assigned ROTs and assigned Specialists, who respond to an RFQ, are required to respond to each RFQ with a certain minimum size. Respecting FLEX market index options, assigned ROTs and assigned Specialist, who respond to an RFQ, are required to respond with at least \$10 million underlying equivalent value or the dollar amount requested in the RFQ, whichever is less. Respecting FLEX industry index options, assigned ROTs and assigned Specialists, who respond to an RFQ, are each required to respond with at least \$5 million underlying equivalent value or the dollar amount requested in the RFQ, whichever is less. Respecting FLEX equity options, assigned ROTs and assigned Specialist, who respond to an RFQ, are required to respond with a market of at least 250 contracts or the size amount requested in the RFQ, whichever is less.

The settlement value for FLEX index options may be specified as the value reported on the Exchange at the: (i) close of trading (P.M.-settled), (ii) opening of trading (A.M.-settled), or (iii) as an average over a specified period of time, within parameters established by the Exchange.<sup>32</sup> For example, the third

category includes the average of the index's opening and closing settlement values on the expiration date, the average of the index's high and low values on the expiration date, or the average of the index's opening, closing, high and low values on the expiration date. However, American style FLEX index options exercised prior to the expiration date can only settle based on the closing value on the exercise date.<sup>33</sup> FLEX index options maybe designated for settlement in U.S. dollars, British pounds, Canadian dollars, Deutsche marks, European Currency Units, French francs, Japanese yen or Swiss francs. With respect to the settlement process applicable to FLEX equity options, exercise settlement shall be by physical delivery of the underlying security pursuant to Rule 1044. Also, FLEX equity options will be subject to the exercise-by-exception procedures of OCC.<sup>34</sup>

With respect to the quote format of FLEX options, a bid and/or offer in the form of a specific dollar amount reflected as a fractional price (e.g.,  $\frac{1}{8}$ ,  $\frac{1}{4}$ ), or a percentage of the underlying security or underlying equivalent value, rounded to the nearest minimum tick shall be acceptable. The option type may be a put, call or hedge order.<sup>35</sup>

The quoting and trading procedure for FLEX options, beginning with the RFQ, is enumerated in Rule 1079(b). Submitting an RFQ is the first step in quoting FLEX options. The Requesting Member must first announced the RFQ to the trading crowd of the non-FLEX option and then submit an RFQ ticket, containing the following: (1) Underlying index or security, (2) type, (3) exercise style, (4) expiration date, (5) exercise price, and, respecting FLEX index options, (6) settlement value (e.g., A.M. or P.M.), and (7) the designated settlement currency. Thereafter, on receipt of an RFQ in proper form, the assigned Specialist or the Requesting

additional index value calculations required due to the type of customization offered by FLEX options. The Exchange is not proposing, at this time, to utilize its own Index Calculation Engine ("ICE") System as the reporting authority for FLEX options. See Securities Exchange Act Release No. 38292 at n.4 (February 15, 1997) (SR-Phlx-96-36).

<sup>33</sup> This limitation is currently in place on other exchanges trading FLEX options and with respect to other American style A.M.-settled index options. See Characteristics and Risks of Standardized Options Trading, February 1994, at page 48.

<sup>34</sup> OCC Rule 805 provides for automatic exercise of in-the-money options at expiration without the submission of an exercise notice to OCC if the price of the security underlying the option is at or above a certain price (for calls) or at or below a certain price (for puts); and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels.

<sup>35</sup> See Rules 1000(b)(7) and 1066(f).

<sup>28</sup> Quarterly expiring index options expire on the first business day of the month following the end of the calendar quarter.

<sup>29</sup> This provision replaces language in Rule 1079(a)(6)(C) of the original proposal stating that a new series cannot be opened on the day of exercise.

<sup>30</sup> The Exchange originally proposed minimum closing (if there is open interest) and responsive transaction sizes of 100 contracts. See Amendment No. 4, *supra* note 8.

<sup>31</sup> See, e.g., Securities Exchange Act Release No. 38839 (July 15, 1997), 62 FR 39040 (July 21, 1997) (order approving File No. SR-CBOE-97-10).

<sup>32</sup> The Exchange proposes to retain its existing securities information vendor as the reporting authority for FLEX index options, respecting any

Member shall cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").<sup>36</sup> RFQs, responsive quotes, booked orders and completed trades will be promptly reported to OPRA and disseminated as an administrative text message. The Exchange notes that although certain information is not required to be part of the RFQ (such as account type, crossing intention, response time and size), this information will be reflected on the final order ticket. Further, the size and crossing intention must be voiced as part of voicing the RFQ.<sup>37</sup>

Following the RFQ announcement, a preset response time will begin, during which members may provide responsive quotes. As stated in paragraph (b)(2), the response time, between two and 15 minutes, will be determined by the Options Committee.<sup>38</sup> During the response time, qualified members may provide responsive quotes to the RFQ, which may be entered, modified or withdrawn during such response time. At the end of the response time, the assigned Specialist, or if none, the Requesting Member shall determine the best bid and offer ("BBO"), based on price, disseminating such market with reference to the corresponding RFQ. However, where two or more bids/offers are at parity, proposed Phlx Rule 1079(b)(3) states that bids/offers submitted by an assigned Specialist, assigned ROT or customer will have priority over the bids/offers submitted by non-assigned ROTs and by controlled accounts as defined in Phlx Rule 1014(g)(i).<sup>39</sup> The Exchange has also explicitly set forth in the text of the proposed rule and Advice F-28 stating that all transactions must be in compliance with Section 11 of the Act and the rules promulgated thereunder.

Following the determination of the BBO, a BBO Improvement Interval may

be invoked if the Requesting Member rejects the BBO or the BBO is for less than the entire size requested. The BBO Improvement Interval is a two minute time period during which the BBO may be matched or improved. As a result of the Improvement Interval, a new BBO is established, which is disseminated with reference to the corresponding RFQ. An assigned ROT and the assigned Specialist who responded with a market during the response time may immediately join the new BBO.

A trade in FLEX options cannot be executed until the end of the response time or BBO Improvement Interval. Once the response time or BBO Improvement Interval ends, the Requesting Member is given the first opportunity to trade on the market by voicing a bid/offer in the trading crowd.<sup>40</sup> The Requesting Member has no obligation to accept any bid or offer for a FLEX option. If the Requesting Member rejects the BBO or the BBO size exceeds the entire size requested, another member may accept such BBO or the unfilled balance of the BBO. Acceptance of a bid/offer creates a binding contract under Exchange rules.

Once the BBO is established, the RFQ remains open that trading day, unless a trade occurs, and a member may re-quote the market with respect to the open RFQ without submitting an additional RFQ. If a trade occurs, a new RFQ is required. Only an assigned ROT or assigned Specialist who responded to the open RFQ during the response time or BBO Improvement Interval may immediately join the re-quoted market, thus matching for parity purposes. Neither the Requesting Member, nor the re-quoting member, is given the first opportunity to trade on the re-quoted market.

Further, there will be a limit order book for FLEX options. The Specialist in the listed non-FLEX equity or index option, whether or not assigned in FLEX options, must accept FLEX orders on the FLEX book after completion of the RFQ process. Only customer day limit orders may be placed on the FLEX index or FLEX equity option book. Booked orders expire at the end of each trading day. The limit price and size must be written on the RFQ ticket and disseminated as an administrative text message through OPRA. In order to trade with the book, an executing member must quote the market and announce the trade. The Exchange proposes to delete the

provision that the executing member has priority over other members, including assigned ROTs and the assigned Specialist, seeking to trade with the booked order. The purpose of this change is to trade FLEX options off the book similarly to non-FLEX options, noting that this consistency should prevent confusion.

Generally, on the Phlx options floor, a cross may take place in accordance with Rule 1064. The Requesting Member must voice the crossing intention as part of voicing the RFQ. With respect to FLEX options, after the BBO has determined, the Requesting Member intending to cross must bid (or offer) at or better than the BBO. If the Requesting Member's bid/offer is at the BBO, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. For instance, if there are two members on parity at the BBO, the Requesting Member and an assigned ROT, the Requesting Member is entitled to receive 50% of the contra-side contracts, which is a fair split, not just the 25% guaranteed minimum right of participation. The remainder of the contra-side is split in accordance with the parity/priority provision applicable to determining the BBO, such that assigned ROTs/Specialists may be afforded priority.

If the Requesting Member's bid/offer improves the existing BBO, an assigned ROT or assigned Specialist who responded with a market during the response time or BBO Improvement Interval, may immediately join the Requesting Member's improved bid or offer, thus matching for parity purposes. However, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. The remainder of the contra-side is split in accordance with the parity/priority provision applicable to determining the BBO, such that assigned ROTs/Specialists may be afforded priority. However, broker-dealer crosses and solicited orders, as defined in Rule 1064, are not eligible for the split afforded by these crossing provisions. Broker-dealer crosses and solicited orders must be announced and bid/offered, under the FLEX crossing provision. No 25% minimum guaranteed right of participation applies to solicited orders or broker-dealer/broker-dealer crosses. In addition, crossing transactions may not be subject to a minimum right of participation, because a customer-to-customer cross would not be required to yield the

<sup>36</sup> Operationally, the Requesting Member provides this information to data entry personnel, who enter it into Exchange systems.

<sup>37</sup> See Amendment No. 2, *supra* note 6, and Amendment No. 4, *supra* note 8.

<sup>38</sup> Initially, the Options Committee has established a response time of ten minutes. Although this Committee will be authorized to change the response time within the permissible range, any such change will be preceded by notice to the Exchange membership. See also CBOE Rule 24A.4(a)(3)(iii).

<sup>39</sup> In Amendment No. 5, the Phlx states that assigned Specialist and Assigned ROTs generally should not receive priority over customer orders in FLEX options transactions, because of their duty under the Act and Exchange rules to assist in the maintenance of a fair and orderly market by responding to temporary disparities between supply and demand, a lack of price continuity or a temporary distortion in pricing relationships. See Amendment No. 5, *supra* note 9.

<sup>40</sup> Thus, when a Requesting Member seeks to trade on the established BBO, an assigned ROT/Specialist cannot participate. For example, where the BBO is 6-7, if the Requesting Members seek to sell 500 contracts at 6, the Requesting Member has priority for that purpose.

remainder (75%) to assigned ROTs/Specialists.

The Exchange notes that an ROT and Specialist may trade FLEX options as an assigned ROT/Specialist or as a non-assigned ROT/Specialist. However, the FLEX assigned Specialist must be the specialist in the non-FLEX option. ROTs and Specialists must apply on the appropriate Exchange form to be assigned in FLEX options. An assigned ROT or assigned Specialist may choose to be assigned in a particular FLEX option, but must respond with a market respecting any FLEX option upon request by a Floor Official.

Assigned ROTs and the assigned Specialist will be subject to certain obligations respecting the trading of FLEX options. For example, the affirmative and negative market making obligations of Rule 1014(c) apply. Further, as noted above, assigned ROTs and the assigned Specialist, who respond to an RFQ, are required to respond with a market of the minimum size.<sup>41</sup> At least two Exchange members (ROTs and/or a Specialist) shall be assigned to each FLEX option. If there is an assigned Specialist and an assigned ROT, the FLEX option will trade pursuant to the specialist system, just as non-FLEX options currently do on the Exchange. If, however, there is no assigned Specialist in a FLEX option, two assigned ROTs are required for that FLEX option to trade.

Assigned ROTs and the assigned Specialist who responded with a market during the response time may join a new bid/offer voiced during the Improvement Interval and prior to a cross, provided they do so immediately and subject to preserving the priority of customer orders. Enabling assigned ROTs and the assigned Specialist to join such new bid/offer affords them parity at that new BBO.

Generally, FLEX option positions are not taken into account when calculating position limits for non-FLEX index options on the same index.<sup>42</sup> Accordingly, FLEX market index options currently approved for non-FLEX options trading will be subject to a separate position limit of 200,000 contracts on the same side of the

market.<sup>43</sup> FLEX industry index options will be subject to a position limit of four times the current position limit—36,000, 48,000 or 60,000 contracts on the same side of the market.<sup>44</sup>

The Exchange notes that FLEX market index option limits are the same as the provisions of other exchanges.<sup>45</sup> The Exchange also believes that four times the non-FLEX limit is an appropriate limit for FLEX industry index options.<sup>46</sup>

Respecting FLEX equity options, the Exchange proposes to eliminate the application of position and exercise limits under a two-year pilot program.<sup>47</sup> Rule 1079(d)(2) would continue to state that position limits for non-FLEX equity options shall not be taken into account when calculating position limits for non-FLEX equity options, or FLEX or non-FLEX index options.

The Exchange is proposing to add that each member or member organization (other than a Specialist or Registered Options Trader) that maintains a position on the same side of the market in excess of three times the level established pursuant to Rule 1001 for non-FLEX equity options of the same class on behalf of its own account of a customer shall report information on the FLEX equity option position, positions

<sup>43</sup> The following are the current Phlx market (broad-based) index options: Value Line Composite Index ("VLE"), National Over-the-Counter Index ("XOC"), and U.S. Top 100 Index ("TPX"). If the Exchange wants to list and trade FLEX options on a broad-based index subsequently approved for non-FLEX options trading, the Exchange must submit a Rule 19b-4 filing with the Commission proposing appropriate FLEX market index options position limits.

<sup>44</sup> The following are the current Phlx industry (narrow-based) index options: OTC Industrial Average Index ("OTZ"), Bank Index ("BKX"), Gold/Silver Index ("XAU"), Semiconductor Index ("SOX"), Utility Index ("UTY"), Forester and Paper ("FPP"), Plane ("PLN"), Phone ("PNX"), and Oil Service ("OSX"). Because the Super Cap Index ("HEX") is neither a market or an industry index, the Exchange applies a position limit (5,500 contracts) that is lower than the position limit tiers for standardized non-FLEX industry index options. Accordingly, the position limit for FLEX options overlying the Super Cap Index will be 22,000 contracts (4 times 5,500 contracts—the existing non-FLEX position limit). See Amendment No. 2, *supra* note 6.

<sup>45</sup> See e.g., CBOE Rule 24A.7(b).

<sup>46</sup> See Phlx rule 1001A(b). In 1996, these limits were raised from 6,000, 9,000 or 12,000 contracts to 9,000, 12,000 or 15,000 contracts. Securities Exchange Act Release No. 37863 (October 24, 1996) (File No. SR-Phlx-96-33). Thus, the proposed change in the corresponding FLEX limits is a change from the original proposal reflecting four times the previous limits.

<sup>47</sup> See Amendment No. 4., *supra* note 8. The Exchange originally proposed position limits of three times the position limit applicable to non-FLEX equity options, pursuant to Rule 1001. The Phlx will provide the Commission with status report after one-and-a-half years of the pilot for the Commission to assess the effects on the markets of the elimination of position and exercise limits on FLEX equity options.

in any related instrument, the purpose or strategy for the position and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange. In addition, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX equity option position in excess of three times the level established for non-FLEX equity options of the same class, the Exchange may impose such higher margin requirement and/or may assess capital charges upon the member organization carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

The Exchange notes that the purpose of the amendment is to compete with the other option exchanges' that have been approved for identical position limit treatment for FLEX equity options,<sup>48</sup> and to attract additional investor interest, and to structure FLEX equity options in a more flexible fashion. There will still, however, be position and exercise limits for FLEX index options, as described above.

The Exchange believes that the elimination of position/exercise limits for FLEX equity options is appropriate in light of the institutional nature of the product. Phlx states that one particular potential institutional use of FLEX options is for stock repurchase programs, which can be utilized by stock issuers in the form of put sales. The Exchange believes that eliminating position limits may attract this business, and thus, bring significant options volume into the realm of exchange trading.<sup>49</sup>

The Exchange believes that attracting additional market participation to FLEX equity options should improve liquidity and the quality of FLEX markets for all participants. The amendment would require member organizations to report positions exceeding three times the non-FLEX position limit in that option. Whenever a member files such a report with the Exchange, the Exchange may request a higher margin requirement in light of the risks associated with such a FLEX equity options position. Thus, the Exchange believes that the amendment is reasonable and consistent with the market protection and anti-manipulation purposes of position/exercise limits. Enhanced reporting is

<sup>48</sup> See Securities Exchange Act Release No. 39032 (September 9, 1997) (File Nos. SR-Amex-96-19; SR-CBOE-96-79; SR-PCX-97-09) ("FLEX Equity Option Position Limit Approval Order").

<sup>49</sup> The Commission notes that issuers would, of course, need to comply with all applicable provisions of the federal securities laws in conducting their share repurchase programs.

<sup>41</sup> However, assigned ROTs and assigned Specialists are not required to provide continuous quotes or markets at a certain minimum bid-ask differential (quote spread parameter).

<sup>42</sup> However, positions in P.M.-settled customized index options shall be aggregated with positions in quarterly expiring options ("QIXs") on the same index, if the customized option expires at the close of trading on or within two business days of the last trading day in a quarter. The Exchange is authorized to trade QIXs on certain index options pursuant to Rule 1101A(b)(iv), although none currently trade.

intended to facilitate the Exchange's surveillance function respecting larger FLEX positions.

The exercise limit for FLEX index options would apply, equivalent to the applicable FLEX index option position limit. The minimum exercise size, however, would be the lesser of \$1 million or the remaining size of the position respecting index options, and the lesser of 25 contracts or the remaining size of the position respecting equity options.

The proposal requires any ROT and Specialist to submit a Letter of Guarantee<sup>50</sup> issued by a clearing member organization, specifically accepting financial responsibility for all FLEX option transactions made by such person. Moreover, an assigned Specialist in FLEX index options shall be required to maintain a minimum of \$1,000,000 in net capital. An assigned ROT in FLEX index options will be required to maintain a minimum of \$100,000 in net liquid assets. Floor Brokers must maintain a minimum of \$50,000 in net capital to qualify to trade FLEX options. Assigned ROTs, the assigned Specialist and Floor Brokers must immediately notify the Exchange's Examinations Department upon failure to be in compliance with these requirements. The Exchange may waive the financial requirements of this Rule in unusual circumstances. Assigned Specialists/ROTs in FLEX equity options, as well as non-assigned ROTs/Specialists in FLEX options, are required to comply with Exchange financial requirements.<sup>51</sup>

The Exchange also proposes to adopt Floor Procedure Advice F-28, Trading FLEX Index and Equity Options, to parallel most of the provisions of Rule 1079(b), including those pertaining to requesting quotations, responses, determining the BBO, the BBO Improvement Interval, executing a trade and crossing. Advice F-28 is not proposed to contain a fine schedule, such that it does not require inclusion in the Exchange's minor rule violation enforcement and reporting plan.

There will be no trading rotations in FLEX options, either at the opening or at the close of trading. The Exchange has determined that, initially, FLEX options will begin trading at 10:00 a.m., one half hour after the normal opening of trading non-FLEX options on the Exchange, in order to limit the burden on the trading crowd. FLEX industry index and equity options will trade until 4:02 p.m., to correspond to the non-FLEX options similar to FLEX

market index options, which would trade until 4:15 p.m. The Exchange may establish other trading times for FLEX options within the regular trading hours for the non-FLEX options, including coordination with FLEX trading hours on other exchanges and reflecting new trading hours for non-FLEX options.<sup>52</sup>

In addition, the RFQ process, which allows a set period of time for bids and offers to be determined, is also designed to create an orderly trading environment, recognizing that greater variation in option terms requires sufficient time to respond with a quote. The Phlx believes, therefore, that the response time and the BBO Improvement Interval should thus promote depth and liquidity.

In order to provide adequate liquidity in FLEX options, two assigned members, whether ROTs or Specialists, are required for each FLEX option, and must be present for a trade to occur.<sup>53</sup> In addition, the minimum size requirements are intended to attract depth and liquidity to FLEX options.

Other FLEX provisions are intended to minimize the market impact of this product. For one, the expiration date may not fall on or within two business days before or after the normal mid-month Friday expiration for options. Because the expiration date of FLEX options may not correspond to a non-FLEX expiration, FLEX options should not affect the market for the underlying securities at the same time. This, in turn, minimizes the impact of FLEX options on the marketplace.

Second, position and exercise limits will apply to FLEX index options, although separate from those applicable to non-FLEX index options. The Exchange believes that separate, higher limits and non-aggregation are appropriate for FLEX index options, which are intended to compete with OTC options that are not subject to such limits. The higher limits reflect the institutional nature and resulting larger size of FLEX index options.

Although FLEX options are characterized by variable terms, not all FLEX option terms can be customized.

<sup>52</sup> Under this proposal, expanding and narrowing FLEX trading hours within the regular trading hours of the particular product would not require a proposed rule change pursuant to Section 19(b) of the Act. The Exchange, however, will notify its members, in advance, prior to making any such change. Any proposal to expand trading hours outside of established regular trading hours would have to be submitted as a proposed rule change to the Commission pursuant to Section 19(b) of the Act.

<sup>53</sup> See Floor Procedure Advices A-10, Specialist Trading with Book, and C-1, Ascertaining the Presence of ROTs in a Trading Crowd, which require that, in addition to the Specialist, a ROT be present during a transaction.

As stated above, the expiration date cannot fall on certain days.

Customization of FLEX equity option strike prices for calls will not be permitted, due to tax issues arising out of the definition of a qualified covered call. Thus, only equity option call strikes that may be listed pursuant to Rule 1012 are eligible, such that the strike price must be consistent with strike price intervals permissible for equity options. In addition, American-style FLEX index options exercised prior to the expiration date can only settle based on the closing value on the exercise date. Despite these restrictions on customization, the Phlx believes FLEX options should nevertheless address a market need for variation in contract terms.

The Exchange believes that FLEX options not only combine variable terms with an auction marketplace and OCC guarantee, but FLEX options will also offer transparency of quotes and trades, because the proposal requires prompt and complete quotation and transaction reporting. Although flexible options will not be continuously quoted, once an RFQ is received, its terms, as well as the responding quotes, will be disseminated by Exchange systems. The terms of any resulting trade will also be disseminated. Specifically, the assigned Specialist, or if none, the Requesting Member will ensure immediate dissemination to OPRA in the form of an administrative text message, which will, in turn, disseminate the information to subscribing vendors.

The Exchange expects to implement a separate computer system to handle FLEX index and equity options, similar to the system utilized for customized foreign currency options. The Exchange expects that initially FLEX options will be entered into this system at a limited number of locations on the trading floor, which will be described in detail by notice to the options trading floor.

The Exchange proposes to utilize a limit order book for FLEX option orders resulting from the RFQ process. The purpose of the book is to accommodate customers who have specified a limit price for a FLEX option order that is away from the market established during the RFQ process. The limit order book will be limited to customer day limit orders, which much be accepted by the Specialist, whether or not that Specialist is assigned in FLEX options. As such, the Specialist must monitor FLEX markets for any booked orders. The Exchange is requiring all Specialists, whether acting as an assigned FLEX Specialist or not, to maintain a FLEX book for consistency with the procedures for non-FLEX

<sup>50</sup> See Phlx Rule 703.

<sup>51</sup> See Phlx Rule 703.

options and to prevent investor confusion. The Exchange believes that the FLEX order book should serve as a useful tool for customers, as does the current limit order book respecting non-FLEX options. With respect to booked orders for the same FLEX option (identical terms), Rule 1014 will apply to determine priority and parity among such orders.<sup>54</sup> When trading with a booked order, a member must re-quote the market and announce the trade.

The Exchange proposes to delete the provision in the original proposal that the executing member has priority over other members, including assigned ROTs and the assigned Specialist, seeking to trade with the booked order. The purpose of this change is to trade booked FLEX options similarly to non-FLEX options, noting that this consistency should prevent confusion.

The Exchange also proposes that an RFQ remain open that trading day, as opposed to expiring immediately, as long as a trade has not occurred. The market must be re-quoted before a member attempts to trade on an existing RFQ. The advantage of an RFQ remaining open is that a re-quote does not require the submission of a new RFQ, thereby avoiding the delay of a new response time where such time may not be needed due to a recent quote. Because an option quoted earlier in the trading day should be easier to price, such that a new response time is not required, the Exchange believes that it may be burdensome to repeat the RFQ process. Thus, RFQs remaining open streamlines FLEX trading and eliminates unnecessary delays. Any time a market is re-quoted that day, the new BBO and any resulting trade are disseminated with reference to the original RFQ. However, once a trade occurs, a new RFQ is required.<sup>55</sup>

Certain aspects of proposed Rule 1079 differ from FLEX provisions of other exchanges. For instance, discretionary transactions would not be permitted in FLEX index and equity options.<sup>56</sup> Thus, the existing provisions of Rule 1065 will apply to prohibit such transactions.

Second, the Exchange also notes that there may not be a Specialist in FLEX

options. Where there is an assigned FLEX Specialist, that FLEX option will trade pursuant to the Phlx's specialist system. Where there is no assigned FLEX Specialist, two assigned ROTs are required. Only the assigned Specialist in the non-FLEX (listed) option may apply to be an assigned Specialist in the FLEX option.<sup>57</sup> but is not required to do so in order to participate. Instead, the non-FLEX Specialist may be an assigned ROT in the FLEX option, or not assigned at all. The current responsibilities of a Specialist to determine a market based on the bids and offers voiced as well as to disseminate bids/offers and trades may be handled by the Requesting Member, where there is no assigned Specialist in that FLEX option. If a trade occurs where the Requesting Member is not a participant and there is no assigned Specialist, the responsibility to submit the trade falls upon the seller or largest participant, in accordance with existing trading procure.<sup>58</sup>

Third, the Exchange has also determined that FLEX options will trade in the crowd of the non-FLEX option in order to facilitate participation by assigned ROTs who will most likely be located in that crowd. The Exchange believes that encouraging market making activity, whether or not assigned, should foster liquidity in FLEX options.

#### IV. Discussion

The Commission finds that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5)<sup>59</sup> and 11A<sup>60</sup> of the Act. Specifically, the Commission finds that the Exchange's proposal is designed to provide investors with a tailored or customized product for eligible index and equity options that may be more suitable to their investment needs. Moreover, consistent with Section 11A of the Act, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the Exchange to compete with the growing OTC market in customized index and equity options.

The Commission believes the Exchange's proposal reasonably addresses its desire to meet the demands of sophisticated portfolio managers and other institutional

investors who are increasingly using the OTC market in order to satisfy their hedging needs. Additionally, the Commission believes that the Exchange's proposal will help promote the maintenance of a fair and orderly market, consistent with Sections 6(b)(5) and 11A of the Act, because the purpose of the proposal is to extend the benefits of a listed, exchange market to index and equity options that are more flexible than current listed options and that currently trade OTC. The benefits of the Exchange's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market, quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.<sup>61</sup>

The Commission believes the Exchange's trading procedures for FLEX index and equity options are reasonably designed to provide some of the benefits of an Exchange auction market along with features of a negotiated transaction between investors. In approving the proposal, the Commission recognizes that the Exchange's proposed FLEX option trading program will allow the trading of option contracts of substantial value, for which continuous quotations may be difficult to sustain. The Commission believes that the Exchange has adequately addressed these concerns by establishing procedures for quotes upon request, which must be firm for a designated period of time and which will be disseminated through OPRA.

The Commission also believes that it is reasonable that an RFQ remain open for that particular trading day once a BBO is established. Specifically, the Commission believes that if the Requesting Member does not accept the BBO, it is reasonable for the Exchange to allow the RFQ to remain open so that the trading crowd may re-quote the market in response to the same contract set forth in the existing RFQ without submitting another RFQ.

The Commission notes that this provision only allows a member to re-quote the market later in the day with respect to the open RFQ from which a trade has not been executed.

The Commission also believes that it is reasonable for the Exchange to allow for FLEX orders to be accepted onto a FLEX limit order book. As noted above, the Specialist in the listed non-FLEX equity or index option, whether or not

<sup>54</sup> The Exchange notes that although the principles of price/time priority and simultaneous bids/offers at parity of Rule 1014 apply, the enhanced specialist participation of sub-paragraphs (g) (ii) and (iii) are not applicable to FLEX options.

<sup>55</sup> The Exchange notes that the Options Committee may determine to establish an abbreviated response time for a new RFQ, because the full ten minutes may not be required for pricing determinations.

<sup>56</sup> See e.g., CBOE Rule 24A.6, which states that a Floor Broker may be given discretion with respect to the number of FLEX contracts to be purchased or sold.

<sup>57</sup> If the option is not listed on the Exchange, specialist functions may be allocated by the Exchange pursuant to Phlx Rules 500 et seq.

<sup>58</sup> See Floor Procedure Advice F-2, Time Stamping, Matching and Access to Matched Trades.

<sup>59</sup> 15 U.S.C. 78f(b)(5).

<sup>60</sup> 15 U.S.C. 78k-1.

<sup>61</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

assigned in FLEX options, will maintain a FLEX limit order book. The Commission believes that a FLEX limit order book, maintained by a Specialist, should help to accommodate FLEX options trading.

The Commission notes that the Phlx is the first exchange to create a limit order book for FLEX options. The Commission believes that by establishing both a FLEX and non-FLEX limit order book for the same option classes, the Exchange should monitor the use of the FLEX limit order book to ensure that members are not using the limit order book to trade ahead of non-FLEX limit orders for the same options class. The Commission believes that this concern is minimized because FLEX options should generally have an expiration date at least two days before or after the expiration date for the corresponding non-FLEX option, thus FLEX and non-FLEX option contracts are not fungible.

Additionally, the Commission believes that the Exchange's proposal to provide a minimum right of participation of at least 25% of the trade to Exchange members who initiate Requests for Quotes in respect of FLEX options and indicate an intention to cross or act as principal on the trade, is consistent with the Act. In addition, under Phlx rules, all FLEX options transactions must be in compliance with the priority, parity, and precedence requirements of Section 11 of the Act,<sup>62</sup> and Rules 11a1-1(T)<sup>63</sup> and 11b-1,<sup>64</sup> promulgated thereunder. These provisions set forth, among other things, the conditions in which members must yield priority to public customers' bids and offers at the same price.

The Commission also believes that the Exchange's proposal to require at least two assigned ROTs, or an assigned specialist and an assigned ROT for each FLEX option class, is consistent with the Act. The Commission notes that the Exchange's rules currently provide a framework that encourages assigned ROTs and specialists, to actively make responsive quotes to provide liquidity in FLEX options. In fact, assigned ROTs and specialists, who respond to an RFQ, must do so with a market of the minimum size in response to the RFQ. Further, assigned ROTs and specialists must provide a market in any FLEX option when requested by a Floor Official. Accordingly, the Commission believes that this requirement should be sufficient to provide quotations in

response to an RFQ and generally accommodate FLEX options trading.

The Commission also believes that the Exchange's proposal to permit FLEX equity options trading on any options-eligible security regardless of whether Non-FLEX equity options overlie that security and trade on the Exchange is reasonable, in that it promotes fair competition among exchanges, consistent with Section 11A of the Act, and will perfect the mechanism of a free and open market and serve to protect investors and the public interest in accordance with Section 6(b)(5) of the Act. The Commission notes that Phlx FLEX equity options must still meet the eligibility requirements and criteria set forth in Phlx Rule 1009.

In addition, the Commission believes that the Exchange's proposal to designate all currently approved Phlx index options as eligible for FLEX index options trading is consistent with the Act. The Commission notes, however, that when submitting a Section 19(b) proposal to list and trade a new non-FLEX index options product, the Exchange must, in the same filing, specifically propose to list and trade the FLEX index options in the same proposed rule change. If the Exchange is not prepared at that time to seek approval for the listing of FLEX options overlying the proposed index, then the Exchange should submit a rule filing pursuant to Section 19(b) of the Act proposing to list FLEX options on that index at an appropriate time in the future.

The Commission believes it is consistent with Section 6(b)(5) of the Act for the Phlx to establish trading hours for FLEX options that begin thirty minutes after the non-FLEX market trading hours, and end at the same time as normal non-FLEX market trading hours. The Commission also believes that because of the nature of the FLEX market, in contrast to the Non-FLEX market, it is reasonable to permit the Exchange, in its discretion, to restrict or expand trading hours for FLEX options, so long as such trading hours occur within the normal options trading hours of the Exchange.<sup>65</sup>

The Commission believes that the Exchange's proposal to restrict exercise prices for calls on FLEX equity options, as described above, reasonably balances the desire of sophisticated portfolio managers and other institutional investors to trade flexible equity options products, with the need to eliminate the potential that the trading of such options could inadvertently impact a tax benefit currently provided to writers of

standardized call options that qualify as QCCs.<sup>66</sup> In approving this provision, the Commission recognizes that the Exchange will restrict the flexibility of investors in determining an essential term of FLEX equity call options contracts (*i.e.*, the exercise price). Nevertheless, investors will still be able to designate contract terms for exercise style (*i.e.*, American or European) and expiration date.<sup>67</sup> Based on this and the current tax framework for QCCs, the Commission believes the limitations imposed by the proposal is appropriate and should still provide investors with a more flexible product than one with standardized option terms while protecting investors in the standardized equity call options market.<sup>68</sup>

The Commission also believes that it is reasonable for the Exchange to propose to eliminate position and exercise limits for FLEX equity options on a two-year pilot basis. While the Commission has generally taken a gradual, evolutionary approach toward expansion of position and exercise limits, the Commission is willing to approve the two-year pilot program for FLEX equity options for several reasons. First, the FLEX equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX equity options are designed to appeal to institutional investors, and it is unlikely that many retail investors would be able to engage in options transactions at that size. Second, the Exchange's other rules and provisions governing FLEX equity options will remain applicable. Third, the OCC will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the proposed elimination of position and exercise limits for FLEX equity options could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or

<sup>66</sup> The Commission notes that the Exchange must file a proposed rule change with the Commission, pursuant to Section 19(b) of the Act, to withdraw or modify this exercise price policy regarding FLEX equity call options.

<sup>67</sup> Of course, investors will also be able to designate exercise price for FLEX equity put options and FLEX index call and put options.

<sup>68</sup> The Commission notes, that OCC, in the approved FLEX equity option 9b-1 ODD supplement, informs investors of the limitation of exercise price intervals when writing FLEX equity call options. See FLEX equity options 9b-1 order, *supra* note 18.

<sup>62</sup> 15 U.S.C. 78k.

<sup>63</sup> 17 CFR 240.11a1-1(T).

<sup>64</sup> 17 CFR 240.11b-1.

<sup>65</sup> See *supra* note 52.

disruptions of the options or the underlying securities. Finally, the Exchange's surveillance programs will be applicable to the trading of FLEX equity options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

As described above, the Exchange have adopted important safeguards that will allow them to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. By monitoring accounts in excess of three times the Non-FLEX equity option position limit in this manner, the Exchange should be provided with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, this information should allow the Exchange to determine whether a large position could have an undue effect on the underlying market and to take the appropriate action.

Given the size and sophisticated nature of the FLEX equity options market, along with the new reporting and margin requirements, the Commission believes that eliminating position and exercise limits for FLEX equity options for a two-year pilot period should not substantially increase manipulative concerns. Nevertheless, the Commission will be able to assess the effects on the markets of the Exchange's proposals during the two-year pilot period. If problems were to arise during such pilot period, the Commission believes that the enhanced market surveillance of large positions should help the Exchange to take the appropriate action in order to avoid any manipulation or market risk concerns.

Nevertheless, because the Commission has only recently agreed to eliminate position and exercise limits for a derivative product, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX equity options. To address this concern, the Commission has approved the proposal for a two-year pilot period. The Exchange will undertake to monitor, among other things, open interest and potential adverse market effects and to report to the Commission on the status of the program no later than eighteen months after the order's date of effectiveness. The reporting of the Exchange's experiences should include, among other things, such information as:

(i) The type of strategies used by FLEX equity options market participants and whether FLEX equity options are being used in lieu of existing standardized equity options;

(ii) the type of market participants using FLEX equity options during the pilot program;

(iii) the average size of the FLEX equity option contract during the pilot program, the size of the largest FLEX equity option contract on any given day during the pilot program, and the size of the largest FLEX equity option held by a single customer/member during the pilot program; and

(iv) any impact on the prices of underlying stocks during the establishment or unwinding of FLEX positions that are greater than three times the standard non-FLEX equity option position limits.<sup>69</sup>

The Commission also believes that it is reasonable for the Exchange to conform its rules to the rules of other options exchanges to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX equity options. The Commission notes that market participants wanting to execute an opening transaction in a particular series of FLEX equity options will continue to be required to meet the 250 (if no open interest in a particular FLEX series) or 100 (if open interest in a particular FLEX series) minimum contract requirement. The Commission believes that this should help to ensure that transactions in FLEX equity options remain of substantial size and, therefore, the product is geared to an institutional, rather than a retail market.

The Commission also believes that the Phlx's proposal to include certain designated foreign currencies in the list of variable FLEX index option contract terms is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors. Additionally, the Commission believes that the Phlx's proposal will help to promote the maintenance of a fair and orderly market because it extends the benefits of a listed exchange market to FLEX index options that trade and settle in certain designated foreign currencies.

The Commission believes that investors should benefit from the additional flexibility by permitting them to designate quotation and settlement terms in various foreign currencies while continuing to ensure adequate investor protection in the trading of these products. The potential risk of settling FLEX options in foreign currencies rather than U.S. dollars is

also disclosed in the ODD pursuant to Rule 9b-1 of the Act.<sup>70</sup>

The Commission also notes that FLEX index options can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in these securities.<sup>71</sup> Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps alleviate stock market volatility,<sup>72</sup> these market impact concerns are reduced in the case of FLEX options because expiration of these options will not correspond to the normal expiration of Non-FLEX options, stock index futures, and options on stock index futures. In particular, FLEX options, will never expire on any "Expiration Friday." More specifically, the expiration date of a FLEX option may not occur on a day that is on, or within, two business days of the expiration date of a Non-FLEX option. The Commission believes that this should reduce the possibility that the exercise of FLEX options at expiration will cause any additional pressure on the market for underlying securities at the same time that Non-FLEX options expire.

In addition, the proposal would limit the effect on securities markets by addressing the relationship between FLEX index options and QIXs. As proposed, Phlx Rule 1079(d)(1) requires P.M.-settled FLEX options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX options would be aggregated two days prior to expiration subject to the position limits for the QIX options on the applicable index. The Commission believes that these rules should help prevent an investor from using FLEX options for the purpose of avoiding the position limits applicable to QIXs.

Nevertheless, because the position limits for both FLEX index options are much higher than those currently existing for outstanding exchange-traded index options (and FLEX equity options have no position limit requirements) and open interest in one or more FLEX option series could grow to significant levels, it is possible that FLEX options might have an impact on the securities markets for the securities underlying FLEX options. The Commission expects the Exchange to

<sup>69</sup> For a more complete discussion of the Commission's findings regarding the elimination of FLEX equity options position limits, see FLEX Equity Option Position Limit Approval Order, *supra* note 50.

<sup>70</sup> See Securities Exchange Act Release No. 33582 (February, 1994).

<sup>71</sup> See, e.g., Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

<sup>72</sup> *Id.*

monitor the actual effect of FLEX options once trading commences and take prompt action (including timely communication with the self-regulatory organizations responsible for oversight of trading in the underlying securities) should any unusual market effects develop.

The Exchange represents that FLEX options will allow them to compete with OTC markets and help meet the demand for customized options products by institutional investors. The minimum value sizes for opening transactions in FLEX options are designed to appeal to institutional investors, and it is unlikely that most retail investors would be able to engage in options transactions at that size. Nevertheless, the FLEX equity option minimum size for opening transactions<sup>73</sup> is much smaller than that for FLEX index options. The Commission also notes that, in approving the proposal to establish 25 contracts as the minimum contract requirement for closing transactions in, and exercises of, FLEX equity options, adequate surveillance guidelines should be in place to ensure that only sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX options class size are utilizing this product. The Commission's staff has reviewed Phlx's surveillance program and believes it provides a reasonable framework in which to monitor such investor open interest.

Because of these established minimum contract requirements for both opening and closing transactions in FLEX equity options, the Commission requests that the Exchange monitor its respective comparative levels of institutional and retail investor open interest in FLEX equity options for one year from the commencement of its FLEX equity option trading program. In particular, the Commission requests that the Exchange provide a report to the Commission's Division of Market Regulation describing the nature of investor participation (*i.e.*, retail vs. institutional) in FLEX equity options no later than two months following the one-year anniversary of FLEX equity options trading on the Exchange. If the Exchange determines in the interim that the proposed rule change has resulted in a pattern of retail investor participation in FLEX equity options, it should notify the Commission's Division of Market

Regulation to determine if (1) the minimum contract requirements for opening transactions should be increased from 250 contracts, and/or (2) the minimum contract requirements for closing truncations should be restored to the originally proposed level.

The Commission also notes that effective surveillance guidelines are essential to ensure that the Exchange has the capacity to adequately monitor trading in FLEX options for potential trading abuses. The Commission's staff has reviewed Phlx's surveillance program and believes it provides a reasonable framework in which to monitor the trading of FLEX options on its trading floor and detect as well as deter manipulation activity and other trading abuses.

In order to ensure adequate systems processing capacity to accommodate the additional options listed in accordance with the FLEX options program, OPRA has concluded that the additional traffic generated by FLEX index and equity options traded on the Phlx is within OPRA's capacity.<sup>74</sup>

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, this amendment proposes that (1) the RFQ include the size and intention to cross, consistent with the existing procedures of other exchanges; and (2) a specific position limit of 22,000 contracts for the Super Cap Index option be adopted. The Commission believes that the proposed amendment further clarifies the proposal and does not raise any new or unique regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists, to approve Amendment No. 2 to the proposal on an accelerated basis.

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.<sup>75</sup> Specifically, as noted above, the Exchange's proposal to (1) eliminate the application of position and exercise limits to FLEX equity options for a two-year pilot period; and (2) reduce the minimum size applicable to a Request-for-Quote for a closing transaction in already-opened FLEX equity options from 100 to 25 contracts, are identical to proposals by other options exchanges that were recently

approved by the Commission. Therefore, the Commission believes that the proposal raises no new regulatory issues.

Further, the Commission believes that other changes incorporated into Amendment No. 4, including, proposals to: (1) amend the proposal rule change to refer consistently to "FLEX index and equity options" (as opposed to index FLEX options); (2) correct the text of proposed Rule 1079(b)(6) regarding the crossing procedure to reflect that the crossing intention has already been announced as part of the RFQ, as amended by Amendment No. 2; and (3) amend proposed Rule 1079(a)(1) to clearly state that any options-eligible security pursuant to Rule 1009 to eligible to underlie FLEX equity options trading. The Commission also believes that these amendments do not raise any new regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists, to approve Amendment No. 4 to the proposal on an accelerated basis.

The Commission finds good cause for approving Amendment No. 5 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, as noted above, the Exchange's proposed amendment clarifies: (1) the parity and priority principles for FLEX options transactions; and (2) that each assigned ROT or assigned Specialist is not required to respond with a quote in every instance, unless requested by a Floor Official. These provisions are substantially similar to those of other options exchanges that were recently approved by the Commission. Therefore, the Commission believes that the proposal raises no new regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists, to approve Amendment No. 5 to the proposal on an accelerated basis.

Interested persons are invited to submit written date, views and arguments concerning Amendment Nos. 2, 4 and 5 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

<sup>73</sup> The minimum size for an opening transaction in FLEX equity options is 250 contracts for any FLEX series in which there is no open interest, and 100 contracts in any currently opened FLEX series.

<sup>74</sup> See Letter from Joseph P. Corrigan, Executive Director, OPRA, to Sharon Lawson, Senior Special Counsel, OMS, Market Regulation, Commission, dated October 20, 1997. ("OPRA Capacity Letter").

<sup>75</sup> As noted *supra* in note 8, Amendment No. 4 supersedes Amendment No. 3, in its entirety.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to SR-Phlx-96-38 and should be submitted by February 13, 1998.

## V. Conclusion

For the reasons discussed above; the Commission finds that the proposal is consistent with the Act and Sections 6 and 11A of the Act, in particular. In addition, the Commission has previously concluded pursuant to Rule 9b-1 under the Act, that FLEX options, including FLEX equity options and FLEX index options, and FLEX index options traded and settled in certain designated foreign currencies, are standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act.<sup>76</sup> Apart from the flexibility with respect to strike prices, expiration dates, exercise styles, and settlement (for FLEX index options), all of the other terms of FLEX options are standardized pursuant to OCC and Phlx rules.

Standardized terms include matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>77</sup> that the proposal (File No. SR-Phlx-96-38), as amended, including Amendment Nos. 2, 4 and 5 on an accelerated basis, is approved. In addition, the portion of the proposal eliminating FLEX equity options position and exercise limits is approved on a pilot basis until January 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>78</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98-1552 Filed 1-22-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39552; File No. SR-Phlx-97-55]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing an Enhanced Parity Split Pilot Program for Specialists in Foreign Currency Options Effective Until December 31, 1998

January 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 1, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise Exchange Rule 1014(h) to establish an enhanced parity split pilot program ("Pilot Program") for its foreign currency option ("FCO") specialists effective until December 31, 1998.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange previously provided and enhanced parity split to the

specialist dealing in dollar denominated delivery German Mark ("3D German Mark") options.<sup>2</sup> The enhanced parity split gave the specialist 50% of the first 500 contracts of any trade in 3D German Mark options. The Exchange eliminated the enhanced parity split earlier this year because the specialist in 3D German Mark options and other traders of the product found it to be of little benefit.<sup>3</sup> At the time the enhanced parity split was eliminated, the Exchange informed the Commission that it would continue to study the potential use of an enhanced parity split for all FCO specialists on a broader basis. This proposed rule change sets forth the Exchange's plan for the expanded use of the enhanced parity split in FCOs.

The Exchange seeks to implement an enhanced parity split procedure similar to the one currently applied to transactions in equity and index options at the Exchange.<sup>4</sup> Under the Pilot Program, however, the application of the proposed FCO enhanced parity split would be more widespread, and the enhanced parity split would be available to all FCO specialists assigned to FCO products.<sup>5</sup> The Pilot Program would be in effect until December 31, 1998.

The enhanced parity split would apply to the first 500 contracts in a FCO transaction in a FCO transaction. When the enhanced parity split is applied, the

<sup>2</sup> The enhanced parity split for the specialist in 3D German Mark options was first approved on December 29, 1994. See Securities Exchange Act Release No. 35177 (Dec. 29, 1994), 60 FR 2419 (Jan. 9, 1995). 3D German Mark options are cash-settled, European-style, cash/spot foreign currency option contracts on the German Mark that trade in one-week and two-week expirations.

<sup>3</sup> The enhanced parity split was eliminated as of September 8, 1997. See Securities Exchange Act Release No. 39030 (Sept. 8, 1997), 62 FR 48332 (Sept. 15, 1997). The sole specialist firm trading 3D German Mark options indicated that the enhanced parity split was not particularly useful and that it did not generally take advantage of it. Furthermore, the Exchange represented that the order size in 3D German Mark options generally was not large enough to trigger the application of the enhanced parity split (*i.e.*, such orders represented less than 100 contracts).

<sup>4</sup> The Exchange recently amended its enhanced parity split pilot program for equity and index option specialists to expand its application. As a result of the amendment, all index options and all newly listed equity options receive the enhanced parity split. However, only 50% of those equity options not considered "newly listed" are eligible to receive the enhanced parity split. In addition, specialists are now permitted to revise the list of eligible equity options on a quarterly basis, rather than an annual basis. See Securities Exchange Act Release No. 39401 (Dec. 4, 1997), 62 FR 65300 (Dec. 11, 1997).

<sup>5</sup> It should be noted that because FCOs on the Italian Lira and the Spanish Peseta are traded as customized options, there are no specialists assigned to those products. For simplicity and clarity, all further references to FCOs shall not include these two products.

<sup>76</sup> 17 CFR 240.9b-1. See *supra* note 9.

<sup>77</sup> 15 U.S.C. 78s(b)(2).

<sup>78</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

FCO specialist will be counted as two crowd participants when determining the allocation of the FCO contracts among the trading crowd participants on parity, except in the following circumstances: (i) when there is one other trading crowd participant on parity, the FCO specialist will receive 60% of the FCO contracts making up the order; or (ii) when there are two other trading crowd participants on parity, the FCO specialist will receive 40% of the FCO contracts making up the order.

Because a customer bid/offer for under 100 FCO contracts is deemed to have time priority over all other bids/offers, such an order will not be subject to the enhanced parity split.<sup>6</sup> This provision will help ensure that small customer orders are not disadvantaged by the application of the enhanced parity split. If a FCO transaction involves more than 500 contracts, those contracts exceeding the 500 contract threshold will be allocated on a pro rata basis among the crowd participants on parity.

It should be noted that the application of this enhanced parity split will be mandatory. Therefore, with respect to any FCO transaction that implicates the enhanced parity split, the FCO specialist will be required to accept the preferential allocation and may not decline the enhancement.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5),<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade; to prevent fraudulent and manipulative acts and practices; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market

and a national market system; and to protect investors and the public interest. The Exchange further believes that the proposed rule change balances the competing interests of specialists and market makers while assisting specialists in making tight and liquid markets and protecting customer interests.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange did not solicit or receive written comments with respect to the proposed change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal

office of the Exchange. All submissions should refer to File No. SR-Phlx-97-55 and should be submitted by February 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98-1553 Filed 1-22-98; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3047]

#### State of California

Orange County and the contiguous Counties of Los Angeles, Riverside, San Bernardino, and San Diego in the State of California constitute a disaster area as a result of damages caused by flooding and mudslides which occurred on December 6, 1997. Applications for loans for physical damages may be filed until the close of business on March 13, 1998 and for economic injury until the close of business on October 12, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere .....	7.625
Homeowners without credit available elsewhere .....	3.812
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
Others (including non-profit organizations) with credit available elsewhere .....	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 304706 and for economic injury the number is 971400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 12, 1998.

**Aida Alvarez,**  
Administrator.

[FR Doc. 98-1614 Filed 1-22-98; 8:45 am]

BILLING CODE 8025-01-P

<sup>6</sup> Exchange Rule 1014(h), "Options on Foreign Currencies," Section (i), states that "all bids/offers of customer accounts for under 100 contracts have time priority over all other bids/offers" on the FCO floor. In that instance, the FCO specialist cannot be on parity with such customer so the enhanced parity split will not apply. However, because Exchange Rule 1014(h)(i) does not confer time priority on customer orders for 100 or more contracts, FCO specialists may avail themselves of the enhanced parity split when interacting with customer orders involving 100 or more FCO contracts.

<sup>7</sup> Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulations, Commission (December 15, 1997).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

**SMALL BUSINESS ADMINISTRATION****[Declaration of Disaster #3045]****State of Florida**

As a result of the President's major disaster declaration on January 6, 1998, I find that Hernando, Hillsborough, Osceola, and Polk Counties in the State of Florida constitute a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding beginning on December 25, 1997 and continuing. Applications for loans for physical damages may be filed until the close of business on March 7, 1998, and for loans for economic injury until the close of business on October 6, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Brevard, Citrus, Hardee, Highlands, Indian River, Lake, Manatee, Okeechobee, Orange, Pasco, Pinellas, and Sumter in the State of Florida may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere .....	7.625
Homeowners without credit available elsewhere .....	3.812
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
Others (including non-profit organizations) with credit available elsewhere .....	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 304506 and for economic injury the number is 970500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 9, 1998.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 98-1613 Filed 1-22-98; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION****[Declaration of Disaster #3048]****State of Florida**

Broward County and the contiguous Counties of Collier, Dade, Hendry, and Palm Beach in the State of Florida constitute a disaster area as a result of damages caused by a fire that occurred on December 18, 1997 in the Kings Court Condominium Development in Oakland Park. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 16, 1998 and for economic injury until the close of business on October 14, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere .....	7.625
Homeowners without credit available elsewhere .....	3.812
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
Others (including non-profit organizations) with credit available elsewhere .....	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 304805 and for economic injury the number is 971500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98-1615 Filed 1-22-98; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION****[Declaration of Disaster #3041]****Northern Mariana Islands; Amendment #1**

In accordance with a notice from the Federal Emergency Management Agency dated January 2, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on

December 16, 1997 and continuing through December 17, 1997.

All other information remains the same, i.e., the deadline for filing applications for physical damage is February 26, 1998 and for economic injury the termination date is September 24, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 9, 1998.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 98-1612 Filed 1-22-98; 8:45 am]

BILLING CODE 8025-01-P

**DEPARTMENT OF STATE****[Public Notice No. 2714]**

**International Telecommunications Advisory Committee (ITAC) U.S. Study Group A of the Telecommunications Standardization Sector (ITAC-T); Meeting Notice**

The Department of State announces a meeting, under the International Telecommunications Advisory Committee (ITAC), of Study Group A of the Telecommunications Standardization Sector (ITAC-T). The meeting will be held Wednesday, February 18, 1998, beginning at 9:30 a.m. and scheduled for all day, in Room 1207 of the Department of State, 22nd and C Street, NW, Washington, D.C.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The purpose of this meeting is to develop United States positions for upcoming ITU-T meetings dealing with standards activities of the International Telecommunication Union (ITU). In particular, the meeting agenda will include preparation for planned ITU-T meetings of (1) Study Group 3 (Tariff and Accounting Principles including related telecommunications economic and policy issues) scheduled for June 3-12, 1998; and (2) Study Group 2 (Numbering and Routing) to be held March 3-13, 1998. Questions regarding the agenda or ITAC-T Sector activities in general may be directed to William Kirsch, Department of State (202 647-0197), fax number (202 647-7407).

All participants may join in discussions, subject to instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to (202) 647-7407 at least 24 hours before the

meeting, providing name, affiliation, date of birth and social security number, to arrange for pre-clearance. One of the following valid photo ID's is required for admittance: U.S. driver's license with picture, passport, government ID (company ID's are not accepted). Enter from the "C" Street Main Lobby.

Dated: January 12, 1998.

**William J. Kirsch,**

*Chairman, ITAC-T Sector.*

[FR Doc. 98-1573 Filed 1-22-98; 8:45 am]

BILLING CODE 4710-45-M

## DEPARTMENT OF STATE

[Public Notice No. 2669]

### Proposed Unidroit Convention and Its Aircraft Protocol Meeting Notice

**AGENCY:** Department of State.

**ACTION:** Notice is hereby given of an Advisory Committee meeting to be held on Thursday, February 26 starting at 9:00 a.m. in the Civil Aeromedical Institute auditorium, Room 254, located at 6500 S. MacArthur Blvd, Oklahoma City, Oklahoma. The meeting will end at or before 1:00 p.m. on February 26. There may be an afternoon session from 2:00 p.m. to 5:00 p.m. for further discussion.

*Attendance:* The meeting is open to the public, free of charge, and is limited to available seating. It may be of interest to persons associated with the selling, leasing, and financing of aircraft and aircraft engines, including persons who search title, give title opinions, submit conveyances for recordation to the FAA Aircraft Registry, or otherwise participate in aircraft financing.

*Nature:* The meeting is intended only to provide information. No formal record will be made. No written comments will be accepted from the audience.

*Agenda:*

- (1) Introductory remarks
- (2) Purpose of UNIDROIT Convention
- (3) Status of actions taken (UNIDROIT Convention and Aircraft Protocol)
- (4) Summary of UNIDROIT Convention with emphasis on registration of international interests
- (5) Summary of Aircraft Protocol
- (6) Relationship of UNIDROIT Convention to existing laws and treaties
- (7) Question and Answer Period

*Background:* The United States Government, through the United States Department of State, has been participating with other nations in studying a proposed multilateral convention (UNIDROIT Convention) to

protect international secured interests in mobile equipment, including aircraft.

A preliminary draft of the UNIDROIT Convention will be submitted to the UNIDROIT Governing Council in early 1998. Thereafter, it is expected that the draft will be circulated to States to determine whether to proceed to intergovernmental negotiations to conclude the Convention.

As proposed, the UNIDROIT Convention would not take effect unless a protocol has been adopted for a specific category of mobile objects. In that regard, UNIDROIT's Aircraft Equipment Protocol Group has completed a preliminary draft protocol which would pertain to certain large airframes and large helicopters, and jet and turbine engines.

The UNIDROIT Convention and Aircraft Equipment Protocol together, when and if adopted and enacted into law by contracting states would provide a comprehensive international system to protect leasing and financing interests. Significant features might include default remedies, priorities, and establishment of an international registration system to register (record) international consensual interests, non-consensual interests, assignments, prospective assignments, and subordinations.

It is anticipated that the international registration system would be primarily an electronic notice system. As proposed, the international registration system is not intended to interfere with countries' existing national registration and recordation systems (e.g., Parts 47 and 49 of the Federal Aviation Regulations).

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Standell, Aeronautical Center Counsel, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, telephone number (405) 954-3296; fax number (405) 954-4676.

Dated: December 17, 1997.

**Harold S. Burman,**

*Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.*

[FR Doc. 98-1631 Filed 1-22-98; 8:45 am]

BILLING CODE 4701-08-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Aviation Rulemaking Advisory Committee—New Task

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

#### FOR FURTHER INFORMATION CONTACT:

Joseph A. Hawkins, Director, Office of Rulemaking, ARM-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9677 or fax (202) 267-5075.

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulation (FAR) and practices with its trading partners in Europe and Canada.

##### The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

##### *Prevention of Fuel Tank Explosions*

Prepare a report to the FAA/JAA that provides specific recommendations and proposed regulatory text that will eliminate or significantly reduce the hazards associated with explosive vapors in transport category airplane fuel tanks. Proposed regulatory text should ensure that new type designs, in-production airplanes and the existing fleet of transport airplanes are designed and operated so that during normal operation (up to maximum certified operating temperatures) the presence of explosive fuel air vapors in all fuel tanks is eliminated, significantly reduced or controlled to the extent that there could not be a catastrophic event. (This task addresses means of reducing explosion hazards by eliminating or controlling explosive fuel vapors. The FAA is also engaged in a separate activity to evaluate whether additional actions should be taken to ensure that ignition sources are not present within fuel tanks. Therefore, control of ignition sources is not within the scope of this task.) In developing recommendations

to the authorities, a report should be generated that includes the following:

(1) An analysis of the threat of fuel tank explosion due to internal and external tank ignition sources for the major fuel system designs making up the transport fleet, including transport airplanes with heat sources adjacent to or within the fuel tanks. The SAFER data presented to the FAA in 1978, which includes evaluation of fuel tank safety in both operational and post crash conditions, should be used as a starting point for determining the level of safety.

(2) An analysis of various means of reducing or eliminating exposure to operation of transport airplane fuel tanks with explosive fuel air mixtures (e.g. inerting, cooling of lower center tank surfaces, combination of cooling and modified fuel properties, etc.) or eliminating the resultant hazard if ignition does occur (installation of selective/voided/full tank reticulating foam, explosion suppression systems). Technical discussion of the feasibility, including cost/benefit analysis, of implementing each of the options on a fleet retrofit, current production, and new type design airplanes should also be provided.

(3) An analysis of the cost/benefit of modified fuel properties that reduce exposure to explosive vapors within fuel tanks. The FAA has asked industry through the American Petroleum Institute to provide pertinent information on fuel properties. The degree of modification to fuel properties necessary to eliminate or significantly reduce exposure to explosive fuel tank ullage spaces in fleet operation must be determined by the group. Factors that may enhance the benefits of modified fuels, such as cooling provisions incorporated to reduce fuel tank temperatures, should be considered. Cost information for the various options should be developed. Information regarding the effects of modified fuel properties on airplane operations, such as engine air/ground starting at low temperatures, maintenance impact, emissions and fuel freeze point, should be analyzed by the group and be provided.

(4) Review comments to the April 3, 1997, **Federal register** notice (62 FR 16014) and any additional information such that validated cost benefit data of a certifiable system is provided for the various options proposed by commenters. This information will be used in preparing regulatory action.

**Note:** In many cases specific cost data provided in the comments to the notice was competition sensitive; therefore the ARAC group should contact commenters directly and request participation in the group.

(5) Recommended objective regulatory actions that will eliminate, significantly reduce or control the hazards associated with explosive fuel air mixtures in all transport airplane fuel tanks to the extent that there could not be a catastrophic event.

In addition to the above task, the working group should support the FAA in evaluation of application of the proposed regulation to the various types of transport airplanes (turbopropeller, business jets, large transports, and other turbine-powered aircraft types which may be affected by a change in fuel properties/availability) and any impact on small businesses.

This activity will be tasked for a 6-month time limit to complete the task defined above. The FAA will consider the recommendations produced by ARAC and initiate future FAA regulatory action. However, if the group is unable to provide the FAA with proposed regulatory language within this time period, the FAA will initiate rulemaking independently. Participants of the ARAC should be prepared to participate on a full-time basis for a 6-month period if necessary.

#### **ARAC Acceptance of Task**

ARAC has accepted this task and has chosen to assign it to a new Fuel Tank Harmonization Working Group. The new working group will serve as staff to the ARAC Executive Committee to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it will forward them to the FAA as ARAC recommendations.

The Fuel Tank Harmonization Working Group should coordinate with other harmonization working groups, organizations, and specialists as appropriate. The working group will identify to ARAC the need for additional new working groups when existing groups do not have the appropriate expertise to address certain tasks.

#### **Working Group Activity**

The Fuel Tank Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the ARAC Executive Committee meeting held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed

recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft a report and/or any other collateral documents the working group determines to be appropriate.

4. Provide a status report at each meeting of the ARAC Executive Committee.

#### **Participation in the Working Group**

The Fuel Tank Harmonization Working Group will be composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than February 2, 1998. The requests will be reviewed by the ARAC chair, the executive director, and the working group chair, and the individuals will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC Executive Committee will be open to the public. Meetings of the Fuel Tank Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 20, 1998.

**Joseph A. Hawkins,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 98-1743 Filed 1-21-98; 1:48 pm]

BILLING CODE 4910-13-M

#### **DEPARTMENT OF TRANSPORTATION**

##### **Surface Transportation Board**

[STB Finance Docket No. 33540]

##### **Blue Mountain Railroad, Inc.— Trackage Rights Exemption—Union Pacific Railroad Company**

Union Pacific Railroad Company (UP) will agree to grant local trackage rights to Blue Mountain Railroad, Inc. (BMR) between: (1) UP milepost 210.0 at

Juniper, OR, and UP milepost 218.0 at Wallula Heights, WA; and (2) UP milepost 0.0 at Wallula, WA, and UP milepost 2.0 near Attilia, WA, a total distance of 10 miles. BMR will be permitted to provide local switching service only to Boise Cascade Corporation, Ponderosa Fibers, and WATCO, Inc., at Wallula, WA.

The transaction is expected to be consummated on or shortly after January 15, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33540, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Decided: January 15, 1998.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,  
Secretary.

[FR Doc. 98-1638 Filed 1-22-98; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33474]

#### Iowa Interstate Railroad, Ltd.—Lease and Operation Exemption—Union Pacific Railroad Company

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10902 the lease by Iowa Interstate Railroad, Ltd. (IAIS) and operation of 6.4 miles of railroad owned by Union Pacific Railroad Company between milepost 358.568 at Des Moines, IA, and milepost 365.0 at West

Des Moines, IA, in Polk County, IA, subject to labor protective conditions.

**DATES:** The exemption will be effective 60 days after IAIS certifies to the Board that it has posted at the workplace of the employees on the affected line, and served on the national offices of the labor unions with employees on the affected line, a notice of the transaction, setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the line that is to be leased. Petitions to stay must be filed by February 23, 1998. Petitions to reopen must be filed by March 16, 1998.<sup>1</sup>

**ADDRESSES:** An original and 10 copies of all pleadings referring to STB Finance Docket No. 33474 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001; in addition, a copy of all pleadings must be served on petitioner's representative: T. Scott Bannister, 1300 Des Moines Building, 405-6th Avenue, Des Moines, IA 50309.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 565-1600. [TDD for the hearing impaired (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA, INC., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289-4357. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

Decided: January 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,  
Secretary.

[FR Doc. 98-1637 Filed 1-22-98; 8:45 am]

BILLING CODE 4915-00-P

## UNITED STATES INFORMATION AGENCY

### Submission for OMB Review; Comment Request

**AGENCY:** United States Information Agency.

**ACTION:** Submission for OMB Review; comment request.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting approval of an information collection entitled "Applications for Administrative and Teaching Exchanges/Seminars Abroad" under OMB control number 3116-0181 which is scheduled to expire on February 28, 1998. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with the program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual and Educational and Cultural Exchange Act of 1961, P.L. 87-256.

**DATES:** Comments are due on or before February 23, 1998.

**COPIES:** Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619-4408, internet address JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395-5871.

**SUPPLEMENTARY INFORMATION:** An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 25, 1997 (vol. 62, no. 227). Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0181) is estimated to average two (2) hours per response. Responses are voluntary and

<sup>1</sup> The due dates for petitions for stay and reopening presuppose that IAIS will promptly certify that the required notice to employees has been given, and that the employees therefore have a reasonable period of time in which to file any petition. Should IAIS be delayed for a significant period of time in making that certification, we will entertain requests to extend the period of time for filing petitions to stay or reopen.

respondents are required to respond only one time, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

#### Current Actions

This information collection has been submitted to OMB for the purpose of requesting reinstatement for a three-year period and approval of revisions regarding the total annual burden hours.

*Title:* "Applications for Administrative and Teaching Exchanges/Seminars Abroad".

*Form Number:* IAP-92.

*Abstract:* To be used by applicants under the Fulbright Teacher Exchange Program which provides opportunities for U.S. Teachers to exchange positions for designated periods with foreign counterparts, or to attend one of a number of short-term seminars abroad on a variety of topics.

#### *Proposed Frequency of Responses:*

No. of Respondents—940  
Recordkeeping House—2.0  
Total Annual Burden—1880

Dated: January 16, 1998.

**Rose Royal,**

*Federal Register Liaison.*

[FR Doc. 98-1606 Filed 1-22-98; 8:45 am]

BILLING CODE 8230-01-M

#### UNITED STATES INFORMATION AGENCY

##### Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978),

and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Augustin Pajou, Royal Sculptor" (see list),<sup>1</sup> imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about February 23, 1998, to on or about May 24, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: January 20, 1998.

**Les Jin,**

*General Counsel.*

[FR Doc. 98-1605 Filed 1-22-98; 8:45 am]

BILLING CODE 8230-01-M

<sup>1</sup> A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at 202/619-6084, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547-0001.

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR  
Minerals Management Service

30 CFR Part 206

RIN 1010-AC06

Amendments to Transportation  
Allowance Regulations for Federal and  
Indian Leases to Specify Allowable  
Costs and Related Amendments to  
Gas Valuation Regulations

Correction

In rule document 97-32802, beginning on page 65753, in the issue of Tuesday, December 16, 1997, make the following corrections:

1. On page 65762, in the first column, amendatory instruction 5 should read as follows:

“3. Section 206.152, paragraph (i) is revised to read as follows:”

§ 206.173 [Corrected]

2. On page 65763, in the second column, in § 206.173(b)(1)(i), in the last line, “\* \* \*” should be added immediately following the end of the paragraph.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ACE-30]

Amendment to Class E Airspace;  
Audubon, IA

Correction

In rule document 98-1105 beginning on page 2598, in the issue of Friday, January 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2599, in the third column, in § 71.1, in the second line, under **ACE IA E5 Audubon, IA [Revised]**, “95°55’14”W” should read “94°55’14”W”.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ACE-24]

Amendment to Class E Airspace;  
Lincoln, NE

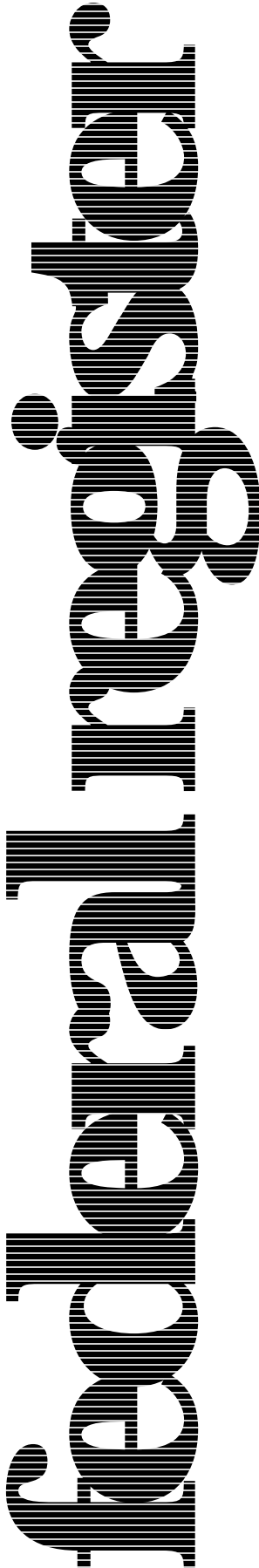
Correction

In rule document 98-1104 beginning on page 2600, in the issue of Friday, January 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2601, in the first column, in § 71.1, under **ACE NE E5, Lincoln, NE [Revised]**, in the first paragraph, in the seventh line, “each” should read “east”.

BILLING CODE 1505-01-D



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Friday  
January 23, 1998

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## Part II

# Department of Education

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**Strengthening Institutions Programs;  
Notice Inviting Applications for New  
Awards for Fiscal Year 1998; Notice**

## DEPARTMENT OF EDUCATION

[CFDA No. 84.031]

**Strengthening Institutions Programs;  
Notice Inviting Applications for New  
Awards for Fiscal Year 1998**

*Purpose of Program:* Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency.

This grant program should be seen as an opportunity for applicants to support those elements of the National Education Goals that are relevant to their unique missions.

*Deadline for Transmittal of Applications:* March 17, 1998.

*Deadline for Intergovernmental Review:* April 9, 1998.

*Applications Available:* Applications will be mailed by January 26, 1998 to the office of the president of all institutions that will receive an application to be designated as an eligible institution under the Strengthening Institutions Program.

*Available Funds:* \$17,000,000.

*Estimated Range of Awards:* \$327,000 to \$350,000 per year for five-year development grants; \$30,000 to \$35,000 for one-year planning grants.

*Estimated Average Size of Awards:* \$338,500 per year for five-year development grants; \$32,500 for one year planning grants.

*Estimated Number of Awards:* 48 development grants; 14 planning grants.

*Project Period:* 60 months for development grants; 12 months for planning grants.

**Note:** The Department is not bound by any estimates in this notice.

*Special Funding Considerations:* In tie-breaking situations described in 34 CFR 607.23 of the Strengthening Institutions program regulations, the Secretary awards one additional point under § 607.23 to an application from an institution that has an endowment fund for which the current market value, per full-time equivalent (FTE) student, is less than the average, per FTE student, at similar type institutions; and one additional point to an application from an institution that has expenditures for library materials, per FTE student, that are less than the average, per FTE student, at similar type institutions.

For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national average for base year 1995-96:

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year Public Institutions .....	\$1,332	\$45
Two-year Non-profit, Private Institutions .....	11,567	121
Four-year Public Institutions .....	2,829	165
Four-year Non-profit Private Institutions .....	42,579	254

If a tie still remains after applying the above, the Secretary determines that institutions will receive an award according to a combined ranking of two year- and four-year institutions. The ranking is established by awarding points for combined FTE averages of library expenditures and endowment values by similar type institutions. Institutions whose combined FTE averages of library expenditures and endowment values are the lowest are ranked higher in strict numerical order.

*Applicable Regulations:* (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 607.

**SUPPLEMENTARY INFORMATION:** Please note that 34 CFR 607.9(b)(2), (3) and (4) have been superseded by § 313(a) of the Higher Education Act of 1965, as amended (HEA). Accordingly, please disregard those sections, which are found in appendix VI of the application.

In making awards for fiscal year 1998, the Secretary will give priority for grants to the highest ranked applicants who are not or were not recipients of an individual Strengthening Institutions Program development grant on or after October 1, 1997. While institutions that are or were recipients of individual Strengthening Institutions Program development grants on or after October 1, 1997 may submit applications if they wish, those applications will be reviewed only if funds are available after all priority applications are funded. The Secretary *does not* anticipate having any funds available after all priority applications are funded.

In § 312 of the FY 1998 appropriation bill, Congress authorized the use of up to 20% of grant funds awarded to an institution under the Part A-Strengthening Program for endowment building. Any institution seeking to use Part A funds for endowment building purposes *shall indicate that intention* in its application and shall abide by the

departmental regulations in 34 CFR Part 628 governing the Endowment Challenge Grant program. Only institutions requesting and competing successfully for new individual development grants in Fiscal Year 1998 may use up to 20% of the funds for endowment building; non-competing continuation grantees are not eligible for endowment building.

**FOR FURTHER INFORMATION CONTACT:**

Blanca Westgate, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Suite CY-80, Washington, D.C. 20202-5335. Telephone: (202) 708-8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Electronic Access to This Document**

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://gcs.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202)219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

**Note:** The official version of a document is the document published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 1057.

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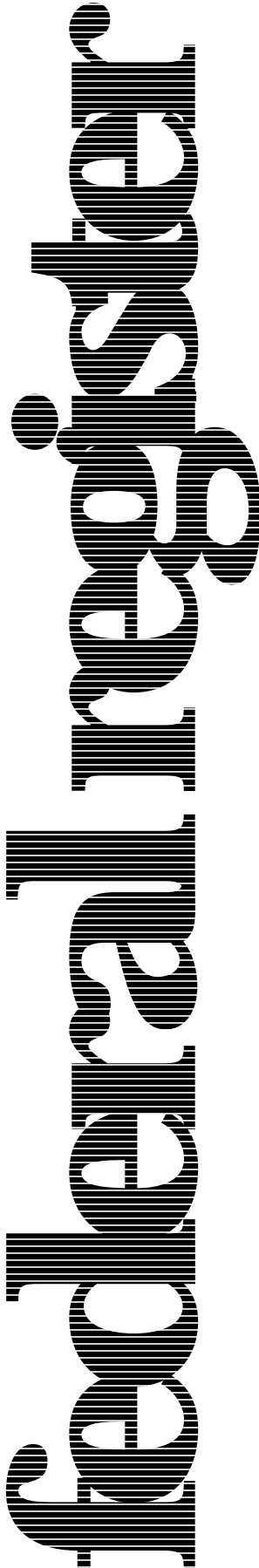
Dated: January 16, 1998.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary  
Education.*

[FR Doc. 98-1560 Filed 1-22-98; 8:45 am]

BILLING CODE 4000-01-P



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Friday  
January 23, 1998

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## Part III

# Department of Energy

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Record of Decision for the Department of  
Energy's Waste Isolation Pilot Plant  
Disposal Phase; Notice

Record of Decision for the Department of  
Energy's Waste Management Program:  
Treatment and Storage of Transuranic  
Waste; Notice

**DEPARTMENT OF ENERGY****Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase****AGENCY:** U.S. Department of Energy.**ACTION:** Record of decision.

**SUMMARY:** The Department of Energy (DOE or Department) is issuing this record of its decision to dispose of transuranic (TRU) waste at the Waste Isolation Pilot Plant (WIPP), a mined repository located 2,100 feet below the surface in an ancient salt deposit near Carlsbad, New Mexico. Under this decision, DOE will dispose of up to 175,600 cubic meters (6.2 million cubic feet) of TRU waste generated by defense activities at WIPP after preparation (i.e., treatment, as necessary, including packaging) to meet WIPP's waste acceptance criteria. This waste includes TRU waste accumulated in aboveground storage since 1970 and TRU waste to be generated over approximately the next 35 years. This waste does not include TRU waste commingled with polychlorinated biphenyls in concentrations greater than or equal to 50 parts per million. Transportation of waste to WIPP will initially be by truck, although the Department reserves the option to use commercial rail transportation in the future. DOE will comply with the requirements and waste limits in the WIPP Land Withdrawal Act, as amended, and the Consultation and Cooperation Agreement between New Mexico and the Department of Energy. DOE has applied for a permit from the New Mexico Environment Department under the Resource Conservation and Recovery Act concerning mixed TRU waste (TRU waste containing radioactive and hazardous constituents); such a permit is not needed for disposal of other TRU waste at WIPP.

Implementation of this decision is contingent upon obtaining a Compliance Certification from the United States Environmental Protection Agency (EPA). EPA recently proposed to certify that WIPP complies with applicable EPA requirements for TRU waste disposal (62 FR 58792, October 30, 1997).

This Record of Decision documents the Department's decision to implement the Preferred Alternative, as analyzed in the "Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement" (DOE/EIS-0026-FS2, September 1997) (SEIS-II). This Record of Decision is being issued in coordination with the preparation of the Record of Decision on

the treatment and storage of TRU waste, which is based on the "Waste Management Programmatic Environmental Impact Statement" (DOE/EIS-0200, May 1997) (WM PEIS). The WM PEIS Record of Decision will specify the DOE sites at which TRU waste will be prepared and stored before disposal.

**FOR FURTHER INFORMATION CONTACT:**

For further information regarding WIPP SEIS-II and transuranic waste contact: Harold Johnson, SEIS-II Document Manager, Mail Stop 535, U.S. Department of Energy, Carlsbad Area Office, Post Office Box 3090, Carlsbad, NM 88221, Telephone (505) 234-7349, E-Mail: Johnsoh@WIPP.carlsbad.NM.US.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202-586-4600 or leave a message at 1-800-472-2756.

**SUPPLEMENTARY INFORMATION:****Background**

Since the mid-1940s, DOE's research and development, nuclear weapons production, and nuclear fuel reprocessing activities have produced transuranic (TRU) waste. TRU waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram of waste.

TRU waste is classified according to the radiation dose rate at a package surface. Contact-handled (CH) TRU waste has a radiation dose rate at a package surface of 200 millirem per hour or less; this waste can safely be handled directly by personnel. Remote-handled (RH) TRU waste has a radiation dose rate at a package surface greater than 200 millirem per hour, and must be handled remotely (e.g., with machinery designed to shield workers from radiation).

TRU waste that has both radioactive and hazardous constituents is known as mixed TRU waste. The hazardous component of mixed TRU waste is regulated under the Resource Conservation and Recovery Act (RCRA). DOE estimates that approximately 60 percent of TRU waste is mixed TRU waste. In addition, some TRU waste is commingled with polychlorinated biphenyls (PCBs) in concentrations greater than or equal to 50 parts per

million and is known as PCB commingled TRU waste. Disposal of PCBs is regulated under the Toxic Substances Control Act.

Before 1970, TRU waste was disposed of in shallow land burial sites. Since 1970, TRU waste has been retrievably stored in aboveground facilities at DOE sites. Plutonium stabilization and management activities, environmental restoration (which could include remediation of sites where TRU waste was buried before 1970), decontamination and decommissioning, waste management, and defense testing and research are expected to generate additional TRU waste.

The Department began examining the environmental impacts of TRU waste disposal under the National Environmental Policy Act (NEPA) in the late 1970s. After issuing the "Final Environmental Impact Statement for the Waste Isolation Pilot Plant" (DOE/EIS-0026, October 1980), the Department decided in a 1981 Record of Decision to begin phased development of WIPP to demonstrate the safe disposal of TRU waste in bedded salt. Consequently, the Department has, since 1981, been preparing to dispose of and isolate TRU waste by emplacing it in the Waste Isolation Pilot Plant (WIPP), a mined repository located 2,100 feet below the surface in an ancient salt deposit near Carlsbad, New Mexico. The major construction activities at WIPP have been completed. WIPP consists of the Waste Handling Building where waste would be received and inspected, an underground disposal area, and a waste handling shaft for transfer of waste from the surface to the disposal area. WIPP was designed for a total capacity of 175,600 cubic meters (6.2 million cubic feet) of TRU waste.

In 1990, after issuing the "Final Supplemental Environmental Impact Statement for the Waste Isolation Pilot Plant" (DOE/EIS-0026-FS, January 1990), DOE issued a Record of Decision that continued the phased development of WIPP by instituting an experimental program to further examine WIPP's suitability as a TRU waste repository. In September 1997, DOE issued the "Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement" (DOE/EIS-0026-FS2) (SEIS-II), which analyzes the environmental impacts of proposed disposal operations at WIPP. The Department has prepared this Record of Decision pursuant to the Council on Environmental Quality Regulations for implementing the provisions of NEPA (40 CFR parts 1500-1508) and the Department of Energy regulations implementing NEPA (10 CFR part 1021).

While SEIS-II was prepared to inform DOE's decision on whether to open WIPP for the disposal of TRU waste, the "Waste Management Programmatic Environmental Impact Statement" (DOE/EIS-0200, May 1997) (WM PEIS) was prepared to inform DOE's decision on where to treat (which includes packaging) and store TRU waste prior to disposal. In the WM PEIS, DOE examined several TRU waste treatment and storage site consolidation strategies (i.e., whether to treat and store TRU waste at the DOE sites where it is generated, at a few regional DOE sites, or at a centralized DOE site). In coordination with this WIPP Record of Decision, DOE is separately preparing a Record of Decision, supported by the WM PEIS, that specifies whether, and if so, where, to consolidate TRU waste for preparation and storage pending disposal.

#### **Purpose and Need for Agency Action**

The Department needs to safely dispose of the TRU waste that has accumulated at DOE sites and to provide for the disposal of additional TRU waste to be generated over approximately the next 35 years (through approximately 2033) in a manner that protects public health and the environment. DOE prepared SEIS-II in order to help DOE make the following decisions:

- Whether to open and operate WIPP for the disposal of TRU waste, and, if so,
- Which portions of the TRU waste inventory would be disposed of,
- To what minimum level TRU waste must be treated for disposal, and
- What mode of transportation would be used to transport TRU waste to WIPP.

#### **WIPP Operation**

With respect to the decision on whether to open WIPP, SEIS-II examines the environmental impacts of four alternatives that involve operating the facility (the Proposed Action and other Action Alternatives) and the impacts of two alternatives that involve dismantling and closing WIPP and continuing storage of TRU waste at the generating sites (the No Action Alternatives).

#### **Waste Inventories**

SEIS-II uses the most recent inventory data available for its analysis, including data from "The National Transuranic Waste Management Plan," (DOE/NTP-96-1204, Revision 0, September 1996) (TRU Waste Management Plan). Using these data, SEIS-II examines the environmental impacts of disposing of different inventories of TRU waste. For purposes

of analysis in SEIS-II, the DOE TRU waste inventory is divided into a Basic Inventory and an Additional Inventory. The Basic Inventory consists of (1) TRU waste generated by defense activities (defense waste) that has been placed in retrievable storage since 1970 and (2) defense TRU waste that would continue to be generated over approximately the next 35 years as a result of plutonium stabilization and management activities, environmental restoration (including remediation of some sites where defense TRU waste was buried before 1970), decontamination and decommissioning, waste management, and defense testing and research. The Basic Inventory volume (per recent estimates analyzed in SEIS-II) is approximately 170,000 cubic meters (6 million cubic feet). The Additional Inventory consists of commercial and non-defense waste (waste for which DOE has responsibility and which was generated by activities other than defense activities), PCB commingled TRU waste, and waste that was buried before 1970 that is not included in the Basic Inventory (because, for example, DOE does not expect remediation activities to occur within approximately the next 35 years, or because the extent of remediation has not been determined). The Additional Inventory also includes non-defense and commercial waste that DOE believes could be generated over approximately the next 35 years. The Additional Inventory volume (per recent estimates analyzed in SEIS-II) is approximately 142,500 cubic meters (5 million cubic feet).

The WIPP Land Withdrawal Act, as amended in 1996, limits the capacity of WIPP to 175,600 cubic meters (6.2 million cubic feet). The Act also specifies that only defense TRU waste may be disposed of at WIPP. In addition, the Consultation and Cooperation (C&C) Agreement between DOE and the State of New Mexico limits the volume of RH-TRU waste to 7,080 cubic meters (250,000 cubic feet). Using the volume estimates analyzed in SEIS-II, disposal of the Basic Inventory would be within these limits, and disposal of the Basic Inventory and all of the Additional Inventory would exceed these limits.

#### **Waste Treatment Levels**

SEIS-II examines treatment of TRU waste to three different levels before disposal: treatment to meet the planning basis WIPP waste acceptance criteria (WIPP WAC), thermal treatment to meet RCRA land disposal restriction (LDR) levels, and treatment by shred and grout. The planning basis WIPP WAC is that level of treatment and packaging in

WIPP WAC Revision 5, with anticipated revisions as analyzed in SEIS-II. Treatment to planning basis WIPP WAC would require repackaging of TRU waste to meet transportation and disposal regulations and DOE policies. Treatment to LDR levels would use a thermal process that would substantially condense the waste and yield a vitrified or metal ingot waste form. Such treatment would also remove any organic hazardous constituents and immobilize any hazardous metals in mixed TRU waste and PCB commingled TRU waste. Treatment by shredding the waste and sealing it in grout would reduce gas generation, but would create a much larger waste volume. As set forth in this WIPP Record of Decision, DOE has concluded that waste destined for WIPP should at a minimum be prepared (i.e., treated as needed, and packaged) according to the planning basis WIPP WAC. As noted previously, in coordination with this WIPP Record of Decision, DOE is preparing a Record of Decision, based on the WM PEIS, that will specify whether, where, and to what extent to consolidate TRU waste for preparation and storage pending disposal.

#### **Transportation Modes**

SEIS-II analyzes the transport of TRU waste by truck, by regular rail and truck (truck transportation from those sites that do not have rail access), and by dedicated rail and truck. Regular rail refers to use of commercial rail lines, with TRU waste being included on trains that are also carrying other types of freight. Dedicated rail would also use commercial rail lines, with trains composed exclusively of rail cars carrying TRU waste.

The Department has investigated and continues to investigate the possibility of using rail transportation, but considers it less reasonable than truck transportation at this time. The primary factors that make rail transportation less reasonable are (1) limited interest of rail carriers in handling shipments of TRU waste, (2) the higher cost of dedicated rail transportation as compared to truck transportation, (3) the initial cost of acquiring additional transport containers needed for rail transportation (because three times as many containers are needed for each shipment), and (4) DOE's inability to obtain rail carrier assurance that TRU waste container transit will enable DOE to unseal the containers within 60 days of loading, as required by Nuclear Regulatory Commission regulations. Regular rail transportation, because of its lower public health impacts and cost, is still

considered a desirable option for some waste transportation in the future, provided that the factors that make it currently less reasonable can be mitigated.

### Alternatives Considered

SEIS-II examines the environmental impacts of the Proposed Action, three other reasonable Action Alternatives, and two No Action Alternatives that involve the waste inventories and treatment levels described above.

#### 1. Proposed Action (Preferred Alternative)

Under the Proposed Action, DOE would open WIPP and dispose of 175,600 cubic meters (6.2 million cubic feet) of post-1970 defense TRU waste (except PCB commingled TRU waste), which is the Basic Inventory of TRU waste adjusted up to the capacity limits specified in the WIPP Land Withdrawal Act and the C&C Agreement. The waste would be treated as necessary to meet the planning basis WIPP WAC. Based on the inventory volume and the anticipated emplacement rate, TRU waste would be disposed of at WIPP over a 35-year period. Transportation would be by truck.

The Department identified the Proposed Action as its Preferred Alternative in the final SEIS-II. Under the Preferred Alternative, TRU waste transportation would initially be by truck; however, the Department reserves the option to use commercial rail transportation of TRU waste in the future.

The Proposed Action (and Preferred Alternative) would isolate TRU waste for more than 10,000 years and would comply with the WIPP Land Withdrawal Act and the C&C Agreement. However, this alternative would not dispose of the Additional Inventory.

#### 2. Action Alternative 1

Under Action Alternative 1, the Department would dispose of the Basic and Additional Inventories of TRU waste (except PCB commingled TRU waste) at WIPP, after treating the waste to meet the planning basis WIPP WAC. SEIS-II analyzes the disposal of TRU waste over the 160-year period needed for emplacement of this amount of waste at the anticipated emplacement rate. SEIS-II also analyzes the environmental impacts associated with the modifications to WIPP facilities and operations that would be needed to increase the emplacement rate and reduce the disposal time (for this alternative, to 60 years). SEIS-II analyzes transportation by truck and

transportation by rail (regular commercial and dedicated trains).

Action Alternative 1 would isolate TRU waste for more than 10,000 years, and would dispose of defense, non-defense, and commercial TRU waste and TRU waste that was buried before 1970. DOE could not implement Action Alternative 1 unless the WIPP Land Withdrawal Act and the C&C Agreement were modified accordingly. In addition, under Action Alternative 1, DOE would not dispose of PCB commingled TRU waste at WIPP.

#### 3. Action Alternative 2

Under Action Alternative 2, the Department would dispose of the Basic and Additional Inventories of TRU waste (including PCB commingled TRU waste) at WIPP after treating the waste thermally to LDR levels. SEIS-II analyzes the disposal of waste over the 150-year period needed for emplacement of this volume given thermal loading constraints and anticipated emplacement rate. SEIS-II also analyzes the environmental impacts associated with the modifications to WIPP facilities and operations that would be needed to increase the emplacement rate and reduce the disposal time (for this alternative, to 70 years). SEIS-II analyzes three subalternatives (Alternatives 2A, 2B, and 2C) that examine consolidated thermal treatment at DOE sites.

Action Alternative 2 would isolate TRU waste for more than 10,000 years, and would dispose of defense, non-defense, and commercial TRU waste, PCB commingled TRU waste, and TRU waste that was buried before 1970. DOE could not implement this alternative unless the WIPP Land Withdrawal Act and the C&C Agreement were modified accordingly.

#### 4. Action Alternative 3

Under Action Alternative 3, DOE would dispose of the Basic and Additional Inventories of TRU waste (except PCB commingled TRU waste) at WIPP after treatment by a shred and grout process. SEIS-II analyzes the disposal of waste over the 190-year period needed for emplacement of this volume at the anticipated emplacement rate. SEIS-II also analyzes the environmental impacts associated with the modifications to WIPP facilities and operations that would be needed to increase the emplacement rate and reduce the disposal time (for this alternative, to 75 years). The impacts of both truck and rail transportation are analyzed.

Action Alternative 3 would isolate TRU waste for more than 10,000 years,

and would dispose of defense, non-defense, and commercial TRU wastes and TRU waste that was buried before 1970. DOE could not implement Action Alternative 3 unless the WIPP Land Withdrawal Act and the C&C Agreement were modified accordingly. The treatment method under this alternative would increase the volume of the waste to be disposed of, thus increasing transportation. In addition, under Action Alternative 3, DOE would not dispose of PCB commingled TRU waste at WIPP.

#### 5. No Action Alternative 1

Under No Action Alternative 1, the Department would thermally treat the Basic and Additional Inventories of TRU waste and store the waste indefinitely in newly constructed monitored retrievable storage facilities. SEIS-II analyzes two subalternatives that examine the impacts of thermal treatment. The impacts of transporting TRU waste to treatment sites by both truck and rail transportation are analyzed. WIPP would be dismantled and closed under this alternative.

No Action Alternative 1 would treat TRU waste to RCRA LDR levels and indefinitely store the treated waste. Treatment to LDR levels would reduce human health impacts in the event of a release of the stored waste. This alternative would not offer the isolation afforded by deep geologic disposal, would require periodic maintenance of storage facilities and waste repackaging, and could not be implemented without modification of agreements that DOE has reached with several states regarding the offsite disposition of TRU waste. No Action Alternative 1 would require the use of effective institutional controls for the indefinite future.

#### 6. No Action Alternative 2

Under No Action Alternative 2, DOE would continue to store newly generated TRU waste at generator sites in existing or planned storage facilities. The newly generated waste would be treated to meet the planning basis WIPP WAC to facilitate safe storage; however, the waste form would not protect human health if the waste were released. No transportation is analyzed for this alternative, because the waste is assumed to remain indefinitely where it was generated. WIPP would be dismantled and closed under this alternative.

This alternative would not involve impacts to workers and the public associated with thermal or shred and grout treatment or with transportation. However, this alternative would not offer the isolation afforded by deep

geologic disposal, would require periodic maintenance of storage facilities and waste repackaging for the indefinite future, and could not be implemented without modification of agreements that DOE has reached with several states regarding the offsite disposition of TRU waste.

#### **Environmentally Preferable Alternative**

In identifying its environmental preference among alternatives for the long-term management of TRU waste, DOE considered both near-term and long-term (through and beyond 10,000 years) human health and environmental impacts. There are alternatives that would result in low near-term impacts but relatively high long-term impacts, and identifying the environmentally preferable alternative(s) requires judgment concerning these impacts and sensitivity concerning the uncertainties of some of the near-term and long-term impacts.

SEIS-II estimates that some potential near-term fatalities, mainly among workers as a result of industrial accidents from waste treatment operations, would occur under all alternatives. The largest number of potential fatalities would occur as a result of thermal treatment under Action Alternative 2 (up to approximately 14 fatalities) and No Action Alternative 1 (up to approximately 13 fatalities), and the smallest under No Action Alternative 2 (approximately 1 fatality), under which only newly generated waste would be treated. Thermal treatment may result in air quality exceedances for radionuclides, offsite treatment impacts (including fatalities), and, for thermal treatment at WIPP (Action Alternative 2C), potentially disproportionately high and adverse impacts to minority and low income populations near WIPP.

Some potential near-term fatalities also could occur from storage operations under all of the alternatives; a larger number of fatalities could occur as a result of a natural disaster, such as an earthquake with a small annual probability of occurring damaging an aboveground TRU waste storage facility. For the No Action Alternatives, however, the associated risks would continue for the indefinite future. Long-term storage risks would also occur for the Additional Inventory that would not be disposed of under the Proposed Action and for PCB commingled TRU waste that would not be disposed of under Action Alternatives 1 and 3.

Transportation for treatment and for disposal are estimated to cause more fatalities (mainly involving the general public) than other near-term waste

management operations. The largest number of fatalities are estimated to occur under the three Action Alternatives, in which the most waste would be sent to WIPP. The analysis shows, however, that regular commercial rail service would have lower potential fatalities than transportation by either dedicated rail service or by truck. The consequences of low probability accidents would be similar for all transportation options. In contrast, the No Action Alternatives would pose little to no transportation risk, depending on the alternative, but would not dispose of the waste.

Thus, SEIS-II analyses show that, in the near term, No Action Alternative 2 would be environmentally preferable. For the long term, however, disposal of as much of DOE's TRU waste as possible at WIPP is environmentally preferable to indefinite storage, because disposal isolates the waste and avoids the long-term need to protect the public and workers from exposure to stored waste, a protection that cannot be assured over the long periods of time that TRU waste poses a health hazard to the public. The long-term impacts of indefinite storage of TRU waste under No Action Alternative 2 and, to a lesser extent, No Action Alternative 1, would result primarily from future exposures to stored waste should DOE lose institutional control of the storage facilities in the future. Over the long term, there would also be an increasing probability of adverse impacts from a natural disaster. Such impacts could be exacerbated by future population growth near DOE sites. SEIS-II analyses show that there is virtually no benefit to long-term repository performance from thermal or shred and grout treatment of waste as compared to treatment to meet the planning basis WIPP WAC.

Considering both near-term and long-term impacts, therefore, Action Alternative 1 is the environmentally preferable alternative, with transportation of waste by regular commercial rail service to the maximum extent possible to lessen near-term impacts. Action Alternative 1 would dispose of defense, non-defense, and commercial TRU waste (with the exception of PCB commingled TRU waste) and TRU waste that was buried prior to 1970, after treatment as necessary to meet the planning basis WIPP WAC. This alternative would dispose of a greater amount of TRU waste than the Proposed Action.

#### **Comments on SEIS-II and Agency Responses**

SEIS-II was initiated by a notice of intent published in the **Federal Register**

on August 18, 1995. A draft SEIS-II was issued in November 1996, and public hearings were held in January 1997. Approximately 4,000 comments were received from individuals, organizations, states, tribes, and Federal agencies during the 90-day comment period. Many of the comments received on the draft SEIS-II expressed strong opinions in favor of or against disposal at WIPP, or suggested revisions to SEIS-II. The final SEIS-II, issued in September 1997, incorporated many changes in response to public comments and internal review, including updating of waste volumes, TRU waste locations, and the long-term performance assessment.

The Department received four letters on the final SEIS-II. The Environmental Protection Agency (EPA) Region 6 letter stated that the agency had completed its review and had no further comments on the final SEIS-II. The State of Tennessee's Department of Environment and Conservation, the State of Idaho Oversight Program, and the Southwest Research and Information Center submitted comments which the Department has considered.

In its comments, the DOE Oversight Division of the Tennessee Department of Environment and Conservation requested clarification of responses provided in SEIS-II regarding: (1) Consolidation of TRU waste at sites prior to being shipped to WIPP, (2) management of "special case" waste, (3) management of the excess inventory of RH-TRU waste if WIPP's capacity is reached, and (4) plans and schedules for transporting TRU waste to WIPP. In addition, the State asked DOE to provide assurance in the Record of Decision that RH-TRU waste will be removed from DOE's Oak Ridge site in accordance with the Oak Ridge Reservation Site Treatment Plan.

Decisions regarding consolidation of TRU waste for preparation and storage pending disposal will be made in the Record of Decision for the WM PEIS. With regard to what the commenter referred to as "special case" waste, such waste that is classified as post-1970 defense TRU waste is included in the SEIS-II analysis as CH-TRU waste as part of the Basic Inventory, and under this Record of Decision upon preparation to meet the planning basis WIPP WAC would be disposed of at WIPP. Materials cited by the commenter that are not classified as TRU waste could not be disposed of at WIPP and are beyond the scope of SEIS-II and this Record of Decision. Regarding the comment about the excess inventory of RH-TRU waste, DOE expects that there will be sufficient capacity at WIPP to

dispose of all RH-TRU waste currently in storage and to be generated over approximately the next 35 years, based on the most recent estimates contained in the TRU Waste Management Plan. DOE's proposed plans and schedule for transporting waste from particular sites to WIPP are contained in the TRU Waste Management Plan. Finally, as stated in SEIS-II, DOE intends to meet its obligations with regard to the disposition of TRU waste as set forth in the agreements (including Site Treatment Plans) that it has reached with states and in related court orders.

The State of Idaho Oversight Program requested that the ROD be consistent with the agreements made with the State with regard to transuranic waste that will be disposed of at WIPP. As noted above, the Department intends to fulfill its obligations with regard to the disposition of TRU waste as set forth in its agreements with states and in related court orders.

In its comments on the final SEIS-II, the Southwest Research and Information Center stated that disposal of TRU waste in a high-level waste repository is a reasonable alternative that was not examined in SEIS-II or the WM PEIS. This commenter also stated that, because all of the estimated TRU waste inventory would not be disposed of at WIPP, DOE will be required to consider additional disposal sites, and that such other sites were not considered in SEIS-II or the WM PEIS. Further, the commenter stated that DOE should prepare a comprehensive NEPA analysis of storage and disposal options for all of DOE's nuclear waste, including all TRU waste, before issuing a Record of Decision on TRU waste disposal at WIPP. Finally, the commenter asked for clarification of DOE's position regarding the opening of WIPP without a RCRA permit from the New Mexico Environment Department.

The Department has examined all reasonable TRU waste disposal alternatives in SEIS-II and the preceding environmental impact statements, including disposal in a high-level waste repository and disposal at sites other than WIPP. DOE decided in 1981 to develop WIPP for the disposal of TRU waste, and SEIS-II confirms that WIPP is an effective disposal facility for TRU waste. The most recent waste volume estimates contained in the TRU Waste Management Plan indicate that DOE would be able to dispose of all of the TRU waste currently in storage, and waste to be generated by DOE over approximately the next 35 years. In SEIS-II, DOE analyzes the disposal at WIPP of all defense, non-defense, and commercial TRU waste and TRU waste

that was buried prior to 1970. The WM PEIS comprehensively analyzes the management of all of DOE's radioactive and hazardous waste types. With regard to the RCRA permit issue, DOE has applied for a RCRA permit from the New Mexico Environment Department for mixed TRU waste. Such a permit is not needed for disposal of other TRU waste at WIPP.

#### Decision

The Department will dispose of up to 175,600 cubic meters (6.2 million cubic feet) of defense TRU waste (except PCB commingled TRU waste) at WIPP. Transportation of waste to WIPP will initially be by truck, although the Department reserves the option to use commercial rail transportation in the future. DOE will prepare (including treatment, as necessary, and packaging) the wastes to be disposed of to meet the WIPP WAC (WIPP WAC Revision 5, including any future revisions as analyzed in SEIS-II, such as pipe overpacks used in waste packaging). This decision establishes only the minimum waste acceptance requirements that must be met for disposal of waste at WIPP. DOE has treated in the past (and based on site-specific circumstances, may decide to treat in the future) TRU waste at some sites more extensively than is required under the WIPP WAC. WIPP may accept for disposal grouted TRU waste, thermally treated TRU waste, or TRU waste treated by any other process that meets the WIPP WAC.

Under this decision, the wastes to be disposed of include both CH and RH defense TRU waste (except PCB commingled TRU waste) placed in retrievable storage after 1970, and TRU waste generated for approximately the next 35 years by plutonium stabilization and management activities, environmental restoration (including defense TRU waste from future remediation of sites where TRU waste was buried before 1970), decontamination and decommissioning, waste management, and defense testing and research. The amount of TRU waste that will be disposed of at WIPP will not exceed limits established by the WIPP Land Withdrawal Act and the C&C Agreement. Impacts of disposal at WIPP of this volume of defense TRU waste are analyzed in the SEIS-II under the Proposed Action (Preferred Alternative).

TRU waste will be transported to WIPP in containers certified by the Nuclear Regulatory Commission, as required by the WIPP Land Withdrawal Act. DOE will initially use trucks to transport waste. However, DOE reserves the option to use commercial rail

service for TRU waste transportation in the future, because SEIS-II analyses show that, under normal operations, regular rail transportation would cause fewer fatalities and would cost less than truck transportation (although consequences of a low probability accident would be similar for all transportation options). In contrast, SEIS-II analyses show that dedicated rail shipments would cause the largest number of fatalities and would be the most costly transportation mode.

#### Basis for Decision

The decision described above minimizes, to the extent possible under current statutory restrictions contained in the WIPP Land Withdrawal Act, the impacts and costs of continued TRU waste management activities at DOE sites. Disposal of TRU waste at WIPP would effectively isolate the waste from human contact for more than 10,000 years if the repository remains undisturbed, and, under the Preferred Alternative, is not expected to adversely impact human health even if the repository were to be breached by drilling. For example, based on analyses in the WIPP SEIS-II, the probability that a member of a drilling crew that breached the repository would die of cancer from exposure to the waste is 4 in 10,000. If an intrusion occurred, radionuclides and heavy metals could reach the Culebra Dolomite (the principal water-bearing unit overlying WIPP). However, impacts would be negligible.

The Department has taken into consideration irreversible and irretrievable commitments of resources, impacts from retrieval of waste from the repository, and cumulative impacts in making this decision. There would be irreversible and irretrievable commitment of resources associated with the use of the WIPP site resulting from residual salt that remains after remediation of the salt storage pile. Although DOE has no plans to retrieve waste from WIPP, if the waste were retrieved prior to repository closure, the impacts would be the same as from emplacing the waste. If the waste were required to be recovered after repository closure, there could be several worker fatalities from recovering waste and any contaminated salt. The impacts from transporting waste back to the treatment sites would be higher than from transporting it to WIPP because of the additional volume of contaminated salt. In considering cumulative impacts, DOE recognizes that for all alternatives involving transportation of TRU waste, there would be cumulative impacts from past, present and reasonable foreseeable

future activities involving transportation of other waste types (hazardous, low-level, low-level mixed, and high level waste). There would also be cumulative impacts at some of the treatment sites as a result of past, present, and reasonably foreseeable future activities.

DOE did not select the No Action Alternatives because they would not isolate TRU waste from humans and the environment, and could cause public harm if long-term institutional control were to be lost. (Although no deaths would be expected based on current population densities and distributions under No Action Alternative 1, intruders could receive doses that greatly exceed current regulatory limits; up to 800 deaths could occur over 10,000 years under No Action Alternative 2). Maintaining such controls indefinitely would require future generations to incur risks and costs that can be avoided by disposing of the waste in WIPP now. In addition, the No Action Alternatives could not be implemented without modification of agreements that DOE has reached with several states regarding the offsite disposition of TRU waste.

DOE did not select the Action Alternatives because disposal of the volumes and waste types involved in these alternatives would require modification of the WIPP Land Withdrawal Act and the C&C Agreement. DOE did not select either thermal or shred and grout treatment because the SEIS-II analyses show that these treatments do not materially improve the repository's performance, and also have greater costs and near-term impacts across the DOE complex.

This decision is consistent with the intent of Congress, as expressed in the WIPP Land Withdrawal Act, that DOE commence disposal operations at WIPP once all applicable health and safety standards and laws have been met. The decision will enable the Department to comply with the agreements that DOE has entered into with several states, particularly those agreements that set a schedule for removal of TRU waste from DOE sites.

Implementation of the decision to dispose of TRU waste at WIPP is contingent on obtaining a Compliance Certification from EPA. EPA recently proposed to certify compliance, subject to certain conditions (62 FR 58792, October 30, 1997). DOE has applied for a RCRA permit from the New Mexico Environment Department for disposal of mixed TRU waste; such a permit is not needed for disposal of other TRU waste at WIPP.

### Mitigation Measures

DOE has a Mitigation Action Plan in effect for WIPP to reduce possible adverse environmental effects. DOE will continue to implement those actions and provide information on their status in its annual mitigation action reports.

DOE will comply with applicable Department of Transportation and Nuclear Regulatory Commission regulations governing the shipment of TRU waste. As described in SEIS-II, DOE will transport TRU waste to WIPP in such a manner as to alleviate, to the maximum extent possible, potential impacts from transportation of TRU waste over the highways. These measures include tracking shipments with the TRANSCOM satellite tracking system and maintaining constant communication with the driver to provide notice of adverse weather or road conditions along the route. Equipment will be inspected at the beginning of each shipment and periodically every 100 miles or every two hours while on route. If shipments are delayed on route, drivers will park at designated DOE or Department of Defense sites, or State designated parking areas if possible. If no such sites are available, drivers will park in areas away from population concentrations and notify the State Police of the shipment's location.

In addition to maintaining its own emergency response capabilities, DOE offers emergency response training to police, fire, and medical personnel located along the WIPP transportation routes. In the event of an accident involving a WIPP shipment, the driver would notify emergency responders by cellular phone and also the WIPP Central Monitoring Room using the TRANSCOM system. A DOE official would be dispatched to assist at the accident site. DOE resources would be available to support mitigation of the accident, including but not limited to package recovery and site cleanup.

The United States Department of the Interior suggested in comments on the draft SEIS-II that DOE should develop a spill contingency plan to address the potential impacts of a diesel fuel spill on fish and wildlife and their habitats. DOE already has plans in place to address the potential impacts of a truck accident; these plans address potential releases of TRU waste and other materials. Remediation efforts may include excavation and disposal of contaminated environmental media as appropriate.

A copy of SEIS-II and this Record of Decision are available from the Center for Environmental Management

Information, telephone: 1-800-7EM-DATA (1-800-736-3282) (in Washington, D.C., call 202-863-5084).

Issued in Washington, D.C., this 16th day of January, 1998.

**Elizabeth A. Moler,**

*Deputy Secretary of Energy.*

[FR Doc. 98-1653 Filed 1-22-98; 8:45 am]

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### DEPARTMENT OF ENERGY

#### Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste

**AGENCY:** Department of Energy.

**ACTION:** Record of decision.

**SUMMARY:** The Department of Energy (DOE) is issuing this Record of Decision on where, i.e., at which DOE sites, the Department will prepare and store its transuranic (TRU) waste prior to disposal. Each of the Department's sites that currently has or will generate TRU waste will prepare and store its TRU waste on site, except that the Sandia National Laboratory in New Mexico (SNL-NM) will transfer its TRU waste to the Los Alamos National Laboratory (LANL) in New Mexico. LANL will have facilities, not available or anticipated at SNL-NM, to prepare and store this waste prior to disposal.

DOE made this decision based on analyses in the Department of Energy Final Programmatic Waste Management Environmental Impact Statement (WM PEIS) (May 1997) and other information. This decision differs slightly from the Preferred Alternative in the WM PEIS. The Appendix to this Record of Decision lists the sites for which DOE analyzed the potential impacts of treating (which includes packaging) and storing TRU waste in the WM PEIS. The potential health and environmental impacts of this decision were identified and evaluated in the Decentralized Alternative of the WM PEIS.

In the future, the Department may decide to ship TRU wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability. The sites that could receive such shipments of TRU waste are the Idaho National Engineering and Environmental Laboratory (INEEL), the Oak Ridge Reservation (ORR), the Savannah River Site (SRS) and the Hanford Site. However, any future decisions regarding transfers of TRU wastes would be subject to appropriate review under the National Environmental Policy Act (NEPA), and

to agreements DOE has entered into, such as those with States, relating to the treatment and storage of TRU waste. Future NEPA review could include, but would not necessarily be limited to, analysis of the need to supplement existing environmental reviews. DOE would conduct all such TRU waste shipments between sites in accordance with applicable transportation requirements and would coordinate these shipments with appropriate State, Tribal and local authorities.

This Record of Decision was prepared in coordination with the Record of Decision issued on January 16, 1998, on disposal of DOE's TRU waste, which is based on the Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (WIPP SEIS-II), issued in September 1997. On the basis of the analyses in the WIPP SEIS-II, DOE decided to dispose of TRU waste generated by defense activities at the WIPP near Carlsbad, New Mexico, after preparation (i.e., treatment, as necessary, and packaging) to meet WIPP's waste acceptance criteria.

**FOR FURTHER INFORMATION CONTACT:** Copies of the WM PEIS and this Record of Decision are available in DOE public reading rooms and selected libraries located across the United States. A list of the public reading rooms at which the WM PEIS and this Record of Decision are available can also be accessed on the DOE Office of Environmental Management's World Wide Web site at <http://www.em.doe.gov/em30/>. To request copies of the WM PEIS, this Record of Decision, or a list of the reading rooms and public libraries, please write or call: The Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026-3769, Telephone: 1-800-736-3282 (in Washington, DC: 202-863-5084).

For further information on DOE's national Waste Management Program, the WM PEIS, or this Record of Decision, please write or call: Ms. Patrice Bubar, Director, Office of Planning and Analysis (EM-35), United States Department of Energy, Office of Environmental Management, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903-7204.

For general information on the U.S. Department of Energy National Environmental Policy Act process, please write or call: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), United States Department of Energy, Office of Environment, Safety, and Health, 1000 Independence Avenue, SW., Washington, DC 20585-0119,

Telephone: (202) 586-4600, or leave a message at (800) 472-2756.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

DOE prepared this Record of Decision pursuant to the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500-1580) and DOE's NEPA Implementing Procedures (10 CFR part 1021). This Record of Decision is based on analyses contained in the Department of Energy's Final Waste Management Programmatic Environmental Impact Statement (DOE/EIS-0200-F). DOE published a notice of its intent to prepare the WM PEIS in the **Federal Register** on October 25, 1990. DOE issued a Draft WM PEIS on September 22, 1995, and hearings were held during the public comment period, which closed on February 19, 1996. All public comments were addressed in the Final WM PEIS, which DOE issued on May 30, 1997.

##### **Purpose and Need for Agency Action**

DOE needs facilities to manage its radioactive and hazardous wastes in order to maintain safe, efficient, and cost-effective control of these wastes; to comply with applicable Federal and state laws; and to protect public health, safety and the environment. The WM PEIS is a Department-wide study of the environmental impacts of managing five types of waste generated by defense and research activities at a variety of DOE sites around the United States. The five waste types are: low-level mixed waste, low-level waste, TRU waste, high-level waste, and hazardous waste. The WM PEIS examines, in an integrated fashion, the potential impacts of managing these waste types and the cumulative impacts of waste management, transportation and other ongoing and reasonably foreseeable activities.

The WM PEIS provides information on the potential impacts of alternatives for nationwide waste management that DOE will use to decide, on a programmatic basis, where, i.e., at which DOE sites, to locate particular waste management facilities. However, DOE will not decide the specific location of new facilities at sites selected to manage a particular type of waste, or a facility's capacity and design, until DOE completes appropriate site-wide or project-specific NEPA reviews, such as an environmental assessment or environmental impact statement. These subsequent analyses would rely, to the extent appropriate, on the analyses in the WM PEIS.

This Record of Decision applies only to the treatment (including packaging) and storage of TRU waste as analyzed in the WM PEIS. Records of Decision for the four other waste types analyzed in the WM PEIS will be issued in due course. An Appendix to this Record of Decision identifies the major sites evaluated in the WM PEIS as potential locations for waste management operations, and the sites analyzed that have TRU waste.

##### **TRU Waste Treatment and Storage**

TRU waste is waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years (a few exceptions to this definition are identified in the WM PEIS). Over 99% of the total volume of existing and anticipated TRU waste is located at the DOE sites listed in the Appendix. TRU waste is categorized as either contact-handled (CH) or remote-handled (RH), based on the radiation level at the surface of the waste container. CH-TRU waste constitutes more than 85% of the total existing and anticipated volume of TRU waste considered in the WM PEIS. CH containers can be safely handled by direct contact, with appropriate health and safety measures. RH-TRU waste contains a greater proportion of radionuclides that produce highly penetrating radiation, and thus RH containers require special handling and shielding during waste management operations.

##### **Alternatives Considered**

In the WM PEIS, the term "alternative" refers to a nationwide configuration of sites for treating, storing, or disposing of a waste type. The alternatives analyzed for each waste type fall within the four broad categories described below.

##### **No Action Alternatives**

These alternatives involve the use of currently existing or planned waste management facilities at DOE sites. In the NEPA process, a no action alternative or "status quo" alternative may not comply with applicable laws and regulations; however, analysis of such an alternative is required and provides an environmental baseline against which the impacts of other alternatives can be compared.

##### **Decentralized Alternatives**

These alternatives involve managing waste where it is or will be generated. Unlike the no action alternatives, the decentralized alternatives may require the siting, construction, and operation of new facilities or the modification of

existing facilities. Under the decentralized alternatives, waste management facilities would be located at a larger number of sites than under regionalized or centralized alternatives.

#### *Regionalized Alternatives*

These alternatives involve consolidating waste management activities by transporting wastes to a limited number of sites (fewer than the number of sites considered for the decentralized alternatives but greater than the number of sites considered for the centralized alternatives). In general, sites with the largest volumes of a

particular waste type were evaluated as potential regional sites for consolidating waste management activities.

#### *Centralized Alternatives*

These alternatives involve consolidating management of wastes at fewer locations than the regionalized alternatives (typically one to three locations). As was the case for the regionalized alternatives, generally those sites with the largest volumes of a particular waste type were evaluated as potential sites for centralized waste management.

There are many possible combinations of the number and locations of DOE sites for waste management facilities. To limit these combinations to a reasonable number for meaningful analysis, DOE selected alternatives that cover the full spectrum of reasonable alternatives under each category for each waste type. Table 1 summarizes the alternatives for TRU waste treatment storage that are analyzed in the WM PEIS, and the preferred alternative that DOE developed based on the analysis and other relevant criteria identified in the WM PEIS.

TABLE 1.—SUMMARY OF TRU WASTE ALTERNATIVES ANALYZED IN THE WM PEIS

Alternative Category	Description
No Action .....	Eleven sites* that anticipate generating TRU waste in the future would prepare TRU waste to meet planning-basis WIPP waste acceptance criteria**; existing TRU waste at 16 sites would be stored indefinitely; assumes TRU waste would not be transported among sites.
Decentralized .....	Either fixed or mobile characterization facilities would be operated at sites that would need to retrieve existing TRU waste, treat, repackage, and ship the waste. TRU waste would be shipped from the 6 sites with the smallest amounts to the nearest site of the 10 sites (ANL-E, NTS, Hanford, INEEL, LANL, LLNL, Mound, ORR, RFETS, SRS) with the largest amounts of TRU waste for storage prior to disposal; assumes for purposes of analysis that the waste would be prepared to meet waste acceptance criteria for WIPP and that disposal would occur at WIPP.
Regionalized (3 Subalternatives) ....	Three subalternatives differ in the level of treatment assumed for the purpose of impact analysis and the number of sites at which treatment would occur; RH-TRU waste would be treated and stored at Hanford and ORR; CH-TRU waste would be treated and stored at all sites considered in each alternative except ORR; all three subalternatives assume for purposes of analysis that disposal would occur at WIPP. Subalternatives: 1. TRU waste would be shipped from the 10 sites with the smallest amounts to the 6 sites with the largest amounts (together having 95% of current and anticipated TRU inventories) for treatment to reduce gas generation and storage prior to disposal. 2. TRU waste would be shipped as described for Regionalized Alternative 1; the waste would be treated to meet Land Disposal Restrictions (LDRs). 3. TRU waste would be consolidated at the 4 sites with approximately 80% of the current and anticipated inventories; treatment to meet LDRs would occur at these 4 sites.
Centralized .....	All CH-TRU waste would be treated at WIPP to meet LDRs; all RH-TRU waste would be treated at Hanford or ORR to meet LDRs and stored there until disposal; assumes for purposes of analysis that disposal would occur at WIPP.
Preferred .....	Combination of the Decentralized Alternative, under which most TRU waste would be treated and stored where it is located, and parts of the Regionalized Alternative, under which some TRU waste could be shipped to INEEL, LANL, ORR, and SRS for treatment and storage, pending disposal, with the level of treatment and whether to dispose of TRU wastes at WIPP to be decided on the basis of analyses in the WIPP SEIS-II.

\*The Appendix to this Record of Decision lists the sites' names and their abbreviations.

\*\* WIPP waste acceptance criteria Revision 5 as defined in the WIPP SEIS-II.

#### **Environmentally Preferable Alternative**

The WM PEIS analyzed a number of potential impacts, including those on human health, air and water resources, ecological resources, land use, and site infrastructures for each of the major sites at which waste management facilities might be located. Differences in impacts among all of the action alternatives were small. Nonetheless, all potential impacts identified in the WM PEIS were considered in DOE's selection of the preferred alternative, its identification of the environmentally preferable alternative, and its decision regarding treatment and storage of TRU waste.

For the 20-year period of waste management operations analyzed in the WM PEIS, the potential impacts under the No Action alternative for TRU waste management are smaller than those identified under the action alternatives, and on this basis, the No Action alternative could be considered to be the environmentally preferable alternative. However, the No Action alternative assumes indefinite storage, and therefore does not include preparing and shipping the waste for disposal, i.e., permanent isolation from the human environment. Although the No Action alternative could pose less risk to workers and communities surrounding

DOE's sites for the first 20 years, the longer-term risks are likely to exceed those for the first 20 years, not only as a result of continuing routine storage operations, but also as a result of degradation of storage facilities and containers.

Taking these circumstances into account, the Department considers the environmentally preferable alternative to be the Decentralized Alternative under which DOE will prepare the TRU waste for disposal with minimal transportation. Transportation of TRU waste would occur only in situations where the sites at which the waste is

located lack the capability to prepare it for disposal.

**Decision: DOE National Programmatic Configuration for Treatment and Storage of TRU Waste Prior to Disposal**

The Department will develop and operate mobile and fixed facilities to characterize and prepare TRU waste for disposal at WIPP. Each of the DOE's sites that has, or will generate, TRU waste will, as needed, prepare and store its TRU waste on site, except that the SNL-NM will transfer its TRU waste to LANL in New Mexico. LANL will have facilities, not available or anticipated at SNL-NM, to prepare and store this waste prior to disposal.

**Basis for the Decision**

Although the No Action Alternative resulted in the lowest impacts among the alternatives analyzed in the WM PEIS over the next 20 years, DOE did not select this alternative because it does not meet the Department's needs for the continued, safe management of TRU waste. Under the No Action Alternative, health and environmental impacts would continue to occur beyond the 20-year period of analysis in the WM PEIS. In the WIPP SEIS-II Record of Decision (discussed further below), DOE decided to dispose of TRU waste at WIPP, after treatment to meet the planning basis waste acceptance criteria. The No Action alternative evaluates treatment to meet the WIPP waste acceptance criteria only for TRU waste to be generated in the future; i.e., existing retrievably stored TRU waste would not be prepared to meet WIPP waste acceptance criteria. Eventually, the stored waste as well as the newly generated and treated waste would have to be repackaged to maintain safe storage conditions.

Among the action alternatives, health and environmental impacts are generally similar over the 20-year period of analysis. DOE's decision seeks to limit environmental impacts and costs, while providing for the safe management of DOE's TRU waste. Among the action alternatives, the life cycle costs estimated in the WM PEIS are lowest for the Decentralized Alternative.

The level of treatment analyzed under the Decentralized Alternative in the WM PEIS corresponds to the level of treatment selected in the Record of Decision for the WIPP SEIS-II for preparing the TRU waste for disposal. Thus the potential health and environmental impacts of treating TRU waste in accordance with the WIPP waste acceptance criteria are identified and evaluated in the analysis of the

Decentralized Alternative, which also identifies the potential impacts of treating and storing waste from SNL-NM at LANL.

**Future Decisions**

The Department may, in the future, decide to transfer TRU wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability. The sites that could receive such shipments of TRU waste are INEEL, ORR, SRS and Hanford. However, any future decisions regarding transfers of TRU waste would be subject to appropriate NEPA review, and to agreements, such as those between DOE and States, relating to the treatment and storage of TRU waste. Future NEPA review could include, but would not necessarily be limited to, analysis of the need to supplement existing environmental reviews.

DOE would conduct all such TRU waste shipments between sites in accordance with applicable transportation requirements and would coordinate these shipments with appropriate State, Tribal and local authorities.

As provided by 10 CFR § 1021.315, the DOE may revise this Record of Decision in the future as long as the revised decision is adequately supported by existing environmental impact statements. Revision of this Record of Decision could occur, for example, as new technology or information from ongoing studies becomes available, or as DOE identifies situations in which it would be appropriate to transfer TRU waste to INEEL, ORR, SRS or Hanford. Implementation of the Record of Decision is subject to compliance with all applicable Federal, State, and local requirements.

**Differences From the Preferred Alternative in the WM PEIS**

This decision differs from the preferred alternative identified in the WM PEIS in three respects. First, the preferred alternative in the WM PEIS included treatment and storage of ORR's RH-TRU waste on site, and treatment and storage of ORR's CH-TRU waste at SRS. Since publication of the WM PEIS, the Department has been considering treatment, as needed, of both ORR's CH-TRU and RH-TRU waste at ORR, because the radiation levels of ORR's CH-TRU waste are close to the levels of ORR's RH-TRU waste, and because the two waste forms share other physical characteristics. By including treatment of ORR's CH-TRU waste with its RH-TRU waste, DOE would reduce the need

to transport CH-TRU waste and achieve economies of scale. The proposed action for a TRU waste facility at ORR that could treat, as needed, both its CH-TRU and RH-TRU wastes is subject to appropriate site-specific review under NEPA.

The second difference between this decision and the preferred alternative in the WM PEIS concerns RH-TRU waste at SRS. The preferred alternative called for transferring this waste to ORR for treatment and storage. The Department has now decided that it should defer any determination whether to transfer RH-TRU waste from SRS to ORR until DOE has the results of the NEPA review for the proposed ORR facility and additional information regarding its capability to meet transportation requirements for shipping the RH-TRU waste to ORR.

The third difference between this decision and the preferred alternative in the WM PEIS concerns the transfer of a portion of the TRU waste at the Rocky Flats Environmental Technology Site (RFETS) to INEEL. Since publication of the WM PEIS, additional information about the characteristics of the TRU waste at RFETS has become available indicating that existing or anticipated facilities at RFETS may be able to prepare this waste for disposal. If, in the future, RFETS needs to use another site's capability to prepare some of its TRU waste for disposal, DOE will complete any further review under NEPA that may be necessary, and will notify the appropriate State, Tribal and local authorities prior to making a final decision.

**Coordinated Decision on Level of Treatment and Disposal of TRU Waste**

This Record of Decision has been prepared in coordination with the WIPP SEIS-II Record of Decision (January 16, 1998), which specifies the level of treatment for, and the disposal location of, TRU waste generated by defense activities. The decisions on the level of treatment of TRU waste and where to dispose of it are based on analyses in the WIPP SEIS-II. In the WIPP SEIS-II Record of Decision, DOE has decided that TRU waste destined for disposal at WIPP will be treated to meet the planning basis waste acceptance criteria (Revision 5 of the waste acceptance criteria as defined in the WIPP SEIS-II), which establish the minimum requirements for preparing TRU waste for disposal at WIPP. DOE has treated in the past and based on site-specific circumstances, may decide in the future to treat TRU waste at some sites more extensively than is required under the WIPP waste acceptance criteria.

**Mitigation**

Chapter 12 of the WM PEIS describes measures that DOE takes in order to minimize the impacts of its waste management activities. Mitigation measures are an integral part of the Department's operations, so as to avoid, reduce, or eliminate potentially adverse environmental impacts. Some of the more important mitigation measures that DOE will continue during the treatment and storage of TRU waste are:

- Use of pollution prevention plans;

- Assistance to States, Tribes, local governments, and other public entities concerning human health, environmental, and economic impacts, including transportation planning and emergency response assistance;
- Use of "cleaner" waste treatment and storage technologies as they become available;
- Rigorous quality assurance programs for the characterization of TRU waste;
- Reuse of existing facilities wherever feasible rather than construction of new facilities;

- Occupational safety and health training to ensure that workers understand operational safety procedures.

Site-specific, non-routine mitigation measures may also be identified and implemented in the course of further decision making under site-specific NEPA reviews based on the WM PEIS.

Issued in Washington, D.C. this 20th day of January, 1998.

**James M. Owendoff,**

*Acting Principal Deputy Assistant Secretary for Environmental Management.*

## APPENDIX—SITES EVALUATED IN THE WM PEIS AND SITES WITH TRU WASTE

Abbreviation	Full name	State	Major site <sup>1</sup>	TRU waste
ANL-E .....	Argonne National Laboratory—East .....	IL	Yes .....	Yes.
BNL .....	Brookhaven National Laboratory .....	NY	Yes .....	No.
ETEC .....	Energy Technology Engineering Center .....	CA	No .....	Yes.
FEMP .....	Fernald Environmental Management Project .....	OH	Yes .....	No.
Hanford .....	Hanford Site .....	WA	Yes .....	Yes.
INEEL .....	Idaho National Engineering and Environmental Laboratory .....	ID	Yes .....	Yes.
LBL .....	Lawrence Berkeley Laboratory .....	CA	No .....	Yes.
LLNL .....	Lawrence Livermore National Laboratory .....	CA	Yes .....	Yes.
LANL .....	Los Alamos National Laboratory .....	NM	Yes .....	Yes.
Mound .....	Mound Plant .....	OH	No .....	Yes.
NTS .....	Nevada Test Site .....	NV	Yes .....	Yes.
ORR .....	Oak Ridge Reservation .....	TN	Yes .....	Yes.
PGDP .....	Paducah Gaseous Diffusion Plant .....	KY	Yes .....	Yes.
Pantex .....	Pantex Plant .....	TX	Yes .....	No.
PORTS .....	Portsmouth Gaseous Diffusion Plant .....	OH	Yes .....	No.
RFETS .....	Rocky Flats Environmental Technology Site .....	CO	Yes .....	Yes.
SNL/NM .....	Sandia National Laboratories—New Mexico .....	NM	Yes .....	Yes.
SRS .....	Savannah River Site .....	SC	Yes .....	Yes.
UofMO .....	University of Missouri .....	MO	No .....	Yes.
WIPP .....	Waste Isolation Pilot Plant .....	NM	Yes .....	No.
WVDP .....	West Valley Demonstration Project .....	NY	Yes .....	Yes.

(1) Sites analyzed in the WM PEIS as potential locations for waste management facilities for one or more types of waste.

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#### LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

**Note:** A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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